Massachusetts Department of Revenue *Division of Local Services*

Mitchell Adams, Commissioner Harry M. Grossman, Acting Deputy Commissioner

In Our Opinion

Prepared by the Property Tax Bureau

This reference document is due in large part to the efforts of Kathleen Colleary, Esq. of the Property Tax Bureau. She envisioned this publication a number of years ago and remained steadfast despite the project's magnitude. The intent of this guidebook is to keep local officials as well informed as possible so that they in turn can better serve the public. Toward that end we present the first edition of *In Our Opinion*.

Harry M. Grossman
Chief, Property Tax Bureau

In Our Opinion

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Introduction

This publication, *In Our Opinion*, contains summaries of legal opinions issued by the Division of Local Services mostly from 1992 through 1995. The legal staff of the Division's Property Tax Bureau has prepared these summaries to provide local officials, municipal attorneys, taxpayers and others interested in local government with ready access to the Division's opinions on a variety of municipal finance and tax issues.

In Our Opinion is also available on-line at this address **http://www.magnet.state.ma.us/dor/dl**s through the World Wide Web. Additional printed copies may be obtained at the State House Bookstore (617) 727-2834. Copies of legal opinions summarized in this publication may be obtained by calling the Division's Public Information Officer at (617)626-2337.

We hope you will find *In Our Opinion* useful and welcome your comments and suggestions.

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Sample Entry (From Chapter 7 — Betterments and Special Assessments)

94-363 (4/27/94) — **File Number/Date of Issue**
Exemptions. — **Index Key(s)**
Public Properties.
Churches, Charitable Organizations and Institutions. — **Issues**
Any property owned by governmental entities and devoted to public purposes is exempt from taxation, including betterments and special assessments. However, churches, charitable organizations and other institutions that qualify for general property tax exemptions are not exempt from betterments or special assessments. **Also see 89-897 (11/30/89) (Property owned by a municipality is exempt from betterment and special assessments whether that land is located within its borders or in another municipality).** — **Summary**
Also found under **PUBLIC PROPERTY.** — **Related Opinions/IGRs**
Other Chapter(s)

Opinion Summaries

Opinions summarized in *In Our Opinion* are arranged by subject matter into the chapters listed in the Table of Contents. The entry for each opinion includes the opinion's Property Tax Bureau file number, date of issue, one or more **index keys**, general description of the issue it addresses and summary of the opinion. Some entries may include summaries of other opinions or references to Informational Guideline Releases (IGRs) on the same issue. Where opinions appear in more than one chapter, the other chapters are also noted at the end of the entry. Within each chapter, the entries appear in chronological order by Property Tax Bureau file numbers.

Index

The index is also organized by the same subject matter topics as the chapters listed in the Table of Contents. Opinions are located in the index using the **chapter headings** and **index keys** for that chapter. The index keys appear on the first page of each chapter.

For example, to search for opinions on whether publicly owned properties are exempt from betterments and special assessments, first identify the most likely **index keys** under the applicable subject matter topics. In this case, the opinions could be indexed under **BETTERMENTS AND SPECIAL ASSESSMENTS, Exemptions**, and/or **PUBLIC PROPERTY, Exemptions**. A review of those sections of the index, as shown below, indicates opinion number 94-363, which appears on pages 7-2 and 33-2 may be helpful.

Betterments and Special Assessments
Exemptions
- *Public Properties: 94-363 . . . . . 7-2*

Public Property
Exemptions
- *Betterments: 94-363 . . . . . 33-2*
- *Special Assessments: 94-363 . . . . . 33-2*

Updates

The Division plans to release printed updates to *In Our Opinion* at least once each year. The Division's home page on the World Wide Web will be updated on a more frequent basis. Each update release will include instructions for the replacement or addition of pages and a new cumulative index.

Abatements and Appeals (Property Tax) 1

89-352 (7/24/89)
Applications.
Abatements.
Assessors' Authority to Reconsider Denied Abatement/Exemption Applications.
A board of assessors may not reconsider an application for an abatement or exemption that has been denied unless the taxpayer has made a timely appeal of the decision to the appellate tax board or the county commissioners. The assessors' jurisdiction to abate or exempt the tax that is the subject of the application is exhausted when they make a decision on the application. However, if they do not act on the application within three months (or extended period allowed by the taxpayer) of the date it was filed, the application is deemed denied by operation of law and the assessors may make a final settlement of the matter and abate the tax during the three month period for taking an appeal even if the taxpayer has not actually filed the appeal.

89-834 (12/14/89)
Refunds.
Interest.
Use of Preliminary Tax Payments To Determine When Tax Paid and Calculate Interest Owed on Abatement Refunds.
Preliminary tax payments are considered payments for the purposes of determining when the fiscal year's tax, as abated, has been paid and calculating interest owed on abatement refunds. Also found under ASSESSMENT ADMINISTRATION.

91-909 (12/20/91)
Applications.
Effectiveness of Faxed Applications.
Filing Deadline.
Timeliness of Faxed Applications.
The faxed copy of an abatement application constitutes a valid application if received in the assessors' office by the application deadline since the purpose of the application is to give the assessors notice of the taxpayer's claim and there is no reason to believe the assessors are inadequately informed as to the identify of the applicant. An application faxed to the town hall annex on the last day for filing is timely if forwarded to the assessors' office before the close of business, but not if it was not forwarded until the morning after its receipt. **Also see 91-102 (3/11/91); 95-111 (5/12/95) (An application faxed to a fax machine shared with other municipal officials after the close of the assessors' office at 1:00 P.M. on the last day for filing is not timely filed because it was made after normal business hours and directed to a machine not in the exclusive control of the assessors).**

92-184 (3/10/92)
Overlay.
Abatements.
Funding Abatements Granted under Chapter 58 Section 8 or Chapter 59.
Creation of Overlay Deficits.
An abated tax, whether paid or not, or whether granted under G.L. Ch. 59 or Ch. 58 §8, is charged to the overlay account of the fiscal year to which the tax relates. G.L. Ch. 59 §70A. If the overlay account of that year is exhausted, the abatement will result in an overlay deficit that will have to be raised in the next tax rate. G.L. Ch. 59 §23. Also found under ACCOUNTING POLICIES AND PROCEDURES.

92-234 (4/27/92)
Agents.
Assessors' Request for Agency/Tax Consultant Agreement Terms.
Information requested by the board of assessors regarding the details of an agency or tax consultant agreement entered into by a taxpayer for the purpose of obtaining an abatement, such as the terms and amount of compensation, is not reasonably necessary to determine a property's fair cash valuation and the taxpayer is not required to provide it under G.L. Ch. 59 §61A. However, the assessors may request information from the taxpayer or agent as is necessary to establish or confirm the scope of the agent's authority before them. Also found under ASSESSMENT ADMINISTRATION.

92-297 (5/7/92)
Applicants.
Subsequent Owners of Personal Property.
An insurance corporation that acquired personal property on January second from an entity subject to taxation on January first is not entitled to an abatement on the grounds the property is exempt from taxation under G.L. Ch. 59 §5(16). The corporation has no standing to seek an exemption for personal property not assessed to it. Also found under PERSONAL PROPERTY.

92-371 (5/14/92)
Appeals.
Appellate Tax Board.
Payment of Delinquent Water and Sewer Charges Added to Taxes.
A taxpayer will preserve the right to appeal the assessors' refusal to abate a real estate tax over $2000 to the appellate tax board by making timely and full (or three year average) payment of the tax assessed on the real estate under G.L. Ch. 59. G.L. Ch. 59 §64. Payment of other amounts, such as delinquent water and sewer charges or betterments, that have been added to the real estate tax for collection purposes is not required.

Index Keys

92-556 (8/17/92)
Interest.
Payment of Interest on Abatement Refunds to Taxpayers Who Owe Other Taxes.
A taxpayer who receives an abatement refund for a particular year's tax, but owes taxes on other properties or for other years on the same property, is entitled to interest on the refund under G.L. Ch. 59 §69. However, the refund and interest may be set-off against the delinquent taxes, interest and charges under G.L. Ch. 60 §93. Those amounts are considered paid on the same day as the refund is issued so that interest on the refund and delinquent taxes should be determined as of the set-off date. Also found under **COLLECTION PROCEDURES**.

92-710 (8/13/92)
Applicants.
Refunds.
Sold Property.
Allocation of Abatement Refunds Between Assessed and Current Owners.
The assessed owner of a property sold during the year may apply for an abatement under G.L. Ch. 59 §59 and any refund should be issued to him as the applicant. Any apportionment of the refund between the assessed owner and the current owner, who paid a portion of the tax and could have also applied for an abatement, is the responsibility of the parties.

92-934 (12/1/92)
Refunds.
Interest.
Payment of Interest on District Tax Abatement Refunds.
Interest must be paid on district taxes refunded as a result of abatements. The district should reimburse the municipality acting on its behalf in the administration of the tax for any refunds and interest paid to taxpayers. Interest payments should be charged to a district appropriation for that specific purpose or an appropriation for interest payments on short term borrowings. Also found under **DISTRICTS**.

92-1064 (1/14/93)
Hearings.
Discussion of Abatement/Exemption Applications in Executive Sessions of Assessors' Meetings.
Under the Open Meeting Law, a board of assessors may discuss the contents of an application for an abatement or exemption in executive session and keep the minutes of the session secret where it is necessary to comply with the provisions of the general laws that limit disclosure of those applications. **For an official opinion on this issue, assessors should consult their county district attorney or the attorney general, who are responsible for the administration and enforcement of the Open Meeting Law. Also see 93-54 (1/28/93).** Also found under **OPEN MEETING LAW**.

93-62 (1/22/93)
Applications.
Submission and Confidentiality of Income Tax Returns As Part of Exemption Applications.
A board of assessors may request applicants for personal exemptions to submit copies of their income tax returns if that information is reasonably necessary to substantiate that the applicants meet the exemptions' requisites. Any returns submitted as part of the applications are confidential under G.L. Ch. 59 §60. Also found under **EXEMPTIONS; PUBLIC RECORDS**.

93-102 (2/25/93)
Applications.
Use of Outdated Forms.
A taxpayer applying for an abatement on an outdated form has made an effective application where the current application form had been revised simply for the convenience of the taxpayer, rather than to reflect some change in the law, and the assessors are not prejudiced by receiving notice of the taxpayer's claim on the old rather than the current form.

93-232 (4/21/93)
Applications.
Filing Deadline.
Abatement Applications by New Owners of Properties Acquired After Filing Deadline.
A person who acquires property after the issuance of the tax bill and the deadline for filing an abatement application has no right to file for an abatement.

93-292 (5/14/93)
Filing Deadline.
Oral Misinformation from Assessors' Office About Filing Deadline.
The assessors do not have authority to act on abatement applications filed after the filing deadline by taxpayers, or their attorneys, tax representatives or other agents, who may have mistakenly thought that the 30 day filing period ended on the same day the third quarter payment was due or who may have been misinformed by the assessors' office by phone about the filing deadline.

93-327 (5/5/93)
Applications.
Multiple Abatement Applications on Same Property.
Agents.
Proof of Agent's Authority.
The assessed owner and subsequent purchaser of a property may both file an application for an abatement and if an abatement is granted, a single certificate naming all applicants should be issued. If a refund is due, all applicants should be notified that the refund may be collected upon receipt of instructions as to whom payment may be released. A person filing an abatement application on behalf of a taxpayer must be specifically authorized to file the application in advance of the filing. If the agent does not attach written authorization from the taxpayer to the application, the assessors may request proof of the agency from the agent or the taxpayer before acting on the application.

94-41 (1/28/94)
Filing Deadline.
Receipt of Tax Bill After Filing Deadline.
The assessors do not have jurisdiction to act on an abatement application filed by a taxpayer, who filed

the application after the 30 day filing period, even though filed immediately after picking up his tax bill. The bill was returned as undeliverable, but had been mailed to the same post office address to which prior years' bills had been mailed and apparently received. The mailing of the bill to the post office address, which the taxpayer had abandoned without notifying the town, is sufficient notice of the tax under G.L. Ch. 60 §3 and actual receipt of the bill is not required.

94-80 (3/22/94)
Applications.
Use of Wrong Forms.
Applications for Residential Exemptions on Abatement Forms.
Unsigned Abatement Applications.
A taxpayer applying for a residential exemption under G.L. Ch. 59 §5C may use the residential exemption application form approved by the commissioner of revenue or the regular abatement application form since an application for a residential exemption is treated as an abatement application under G.L. Ch. 59 §59. The assessors may act on unsigned abatement applications where the application forms were accompanied by cover letters signed by the applicants and were otherwise complete. The cover letters can be treated as part of the applications and the signatures on those letters are sufficient to meet any requirement that the applications be signed.

94-479 (5/27/94)
Refunds.
Abatement Refunds to Assessed Owner of Sold Properties.
Credit of Abated Amount to Outstanding Tax Balance.
The collector has no authority to issue a refund to an assessed owner of a property, who receives an abatement and sells the property before the second tax bill is issued, if there is an outstanding balance of the year's tax bill. G.L. Ch. 59 §69. The collector's application of the abatement to the unpaid balance, issuance of a second half bill reflecting the balance due after the abatement, and mailing of the second half bill care of the new owners, is proper. Also found under **COLLECTION PROCEDURES; TAX BILLS**.

94-527 (7/26/94)
Filing Deadline.
Timeliness of Application Deposited in Treasurer's Drop Box.
The assessors do not have jurisdiction to act on an abatement application filed by a taxpayer, who came to town hall early, before town offices opened, on the morning of the day abatement applications were due and placed his application in the treasurer's drop box on the town hall door, where the treasurer's office did not deliver the application to the assessors' office until the day after the filing deadline. An abatement application is not filed until it has reached the assessors or their office and the person seeking an abatement must demonstrate that the application was received by the assessors, or their office, within the filing period.

94-771 (10/28/94)
Interest.
Waiver of Interest on Abatement Refunds as Condition of Settlement.
Interest otherwise due a taxpayer on an abatement refund under G.L. Ch. 59 §69 may be waived as part of a full and final settlement of the case by the parties. **Also see 93-889 (3/15/94) (The board of assessors may require applicants for abatement to sign a settlement agreement requiring them to forgo their right to interest on any abatement refund received).**

94-866 (5/24/95)
Applications.
Power to Impose Abatement Application Filing Fees.
A fee may not be imposed for filing an application for an abatement with a local board of assessors in the absence of express statutory authority, and G.L. Ch. 40 §22F does not grant that authority. The abatement procedure is an integral part of fixing a taxpayer's property tax liability for the year, and the imposition of any conditions governing the recourse of a taxpayer to the abatement remedy, including the payment of any filing fees, is an exercise of the power to tax, which is reserved exclusively to the legislature under the Home Rule Amendment. Consequently, any filing fee for initiating the abatement process before the assessors must be expressly authorized by statute. Neither the language, nor purpose, of G.L. Ch. 40 §22F indicates it was intended by the legislature to grant cities and towns such authority. By its language, it applies to regulatory fees paid by an individual or entity for receipt of privileges such as licenses, permits or certificates under a regulatory scheme related to public health, safety or welfare, as well as to user fees charged for a particular municipal service. A taxpayer who seeks an abatement of a local property tax is not obtaining a privilege or service from a municipal board or officer as is contemplated by the statute. Moreover, the primary purpose of the statute seems to have been to facilitate the periodic updating of fee schedules to reflect changes in the local cost of administering regulatory activities or providing particular services, rather than to grant cities and towns additional powers with respect to the types of fees they may impose. Also found under **FEES AND CHARGES**.

94-888 (10/27/94)
Appeals.
Appellate Tax Board.
Payment of Three Year Average Tax.
Late Quarterly Payments.
Even if a real estate tax over $2,000 has been paid in full, a taxpayer who did not pay the full amount due for any installment may use the three year average method provided under G.L. Ch. 59 §64 for determining the amount of tax that must have been paid without incurring interest to preserve a right to appeal a decision of a local board of assessors on an abatement application. If the municipality is operating under a quarterly tax system, the three year average must be paid in the same number of installments and at the same time as taxes are otherwise paid in the municipality, which means in this case that late payment of the third quarter installment by the taxpayer would preclude any appeal to the appellate tax board.

94-889 (10/18/94)
Abatements.
Taxes Redetermined by Bankruptcy Court.
The assessors may abate the amount of tax, interest or charges required by a judgment of the bankruptcy court in the course of an adversarial proceeding. Under 11 U.S.C. 505, the bankruptcy court may, with certain exceptions, determine the amount or legality of any tax whether or not paid. Also found under **COLLECTION PROCEDURES**.

95-72 (2/23/95)
Applicants.
Lessees in Shopping Malls.
A lessee of a retail unit in a shopping mall complex, which is assessed as a single parcel, does not have standing to apply for an abatement under G.L. Ch. 59 §59 where it is not obligated to pay at least half of the tax on the whole mall complex, or has not paid all the tax.

95-320 (4/5/95)
Filing Deadline.
Delay in Delivery of Tax Bills.
The assessors do not have jurisdiction to act on an abatement application mailed by a taxpayer within a week of receiving his tax bill, but more than 30 days after the date the collector certified as the mailing date of the bills, where no alternative mailing date has been established. It is the date of mailing rather than the date of receipt that controls in calculating the 30 day abatement period. Any possible delay or mishandling by the postal service does not extend the filing period.

95-604 (7/11/95)
Abatements.
Assessors' Authority to Grant Further Abatements Without Timely Appeals.
The assessors may not abate additional amounts for a property owner who timely filed an abatement application and received an abatement, but who did not take a timely appeal of the abatement originally granted in accordance with G.L. Ch. 59 §64.

Accounting Policies and Procedures

92-88 (2/18/92)
Gifts/Grants.
Acceptance of Cape Cod Commission Grant by Planning Committee.
A local planning committee appointed by the board of selectmen to develop and manage a local comprehensive plan under the Cape Cod Commission Act is a municipal department and may accept grants from the commission for planning purposes on its own without town meeting approval, and may spend those funds, with the approval of the selectmen, without appropriation. G.L. Ch. 44 §53A.

92-184 (3/10/92)
Overlay.
Funding Abatements Granted under Chapter 58 Section 8 or Chapter 59.
Creation of Overlay Deficits.
An abated tax, whether paid or not, or whether granted under G.L. Ch. 59 or Ch. 58 §8, is charged to the overlay account of the fiscal year to which the tax relates. G.L. Ch. 59 §70A. If the overlay account of that year is exhausted, the abatement will result in an overlay deficit that will have to be raised in the next tax rate. G.L. Ch. 59 §23. Also found under **ABATEMENTS AND APPEALS**.

92-354 (5/13/92)
Receipts Reserved for Appropriation.
Parking Garage Receipts.
Receipts from a municipal parking garage may be credited to the receipts reserved for appropriation accounts established under G.L. Ch. 40 §§22A-22C for parking meter revenues and appropriated for parking purposes. Also found under **SPECIAL FUNDS**.

92-384 (4/29/92)
Insurance Proceeds.
Revenues.
Application of Worker's Compensation and Police/Firefighter Disability Insurance Proceeds to Reimburse Salary Accounts.
Worker's compensation payments to an employee endorsed over to a municipality (which paid the employee sick leave prior to a determination of eligibility) and insurance reimbursements for injured police and fire employees (paid leave without loss of pay by the municipality under G.L. Ch. 41 §111F) are general revenue under G.L. Ch. 44 §53. They cannot be applied to reimburse salary accounts.

92-565 (6/25/92)
Fees/Fines.
Revenues.
Use of Building Permit Receipts to Pay Building Inspectors.
Building permit fees are fixed by by-law, not statute, and are general revenue under G.L. Ch. 44 §53 that cannot be paid to the building inspector without appropriation.

92-697 (7/29/92)
Real Estate Sale Proceeds.
Payment of Existing Debt Service for Departmental Equipment.
A town may not use proceeds from the sale of real estate to pay the principal and interest on existing debt issued for the purchase of departmental equipment. Under G.L. Ch. 44 §63, the only existing debt obligations proceeds from the sale of municipal property may be applied to are those issued for the acquisition of land or the construction of buildings under G.L. Ch. 44 §7(3).

92-723 (8/6/92)
Gifts/Grants.
Revenues.
Payments for Right to Use Municipal Property.
Payments made to a town by a business for the right to place some of its equipment on town property cannot be spent by the selectmen without appropriation as a gift or grant under G.L. Ch. 44 §53A. The payments are being made under an agreement in return for the use of town property, not to support some particular spending purpose, and must be treated as revenue under G.L. Ch. 44 §53.

92-829 (10/19/92)
Fees/Fines.
Estimated Receipts.
Revenues.
Burial Permit Fees.
Receipts Reserved for Appropriation.
Sale of Cemetery Lots.
Trust Funds.
Perpetual Care Bequests.
Fees charged for burial permits are general revenue under G.L. Ch. 44 §53 and are treated as local estimated receipts on the tax rate recapitulation. Monies received from the sale of cemetery lots are credited to a receipts reserved for appropriation account and may be appropriated by town meeting for the care, improvement, embellishment or enlargement of the cemetery under G.L. 114 §§15 and 25. Gifts or bequests of funds for the perpetual care of cemetery lots are treated as gifts or trust funds, depending on the intent of the donor, and under G.L. Ch. 114 §25 they may be spent by the cemetery commissioners without appropriation only for their intended purposes. **Also see 90-505 (11/1/90); 92-424 (7/6/92); 92-902 (11/4/92); 94-450 (10/25/94) (Only $120 of the $900 received at the time a cemetery lot is sold is to be treated as cemetery lot proceeds under G.L. Ch. 114 §15 where the payment specifically included an amount ($780) for the "perpetual care" of the lot.); IGR 90-104 "Cemetery Trust Funds" (January**

1990); 95-123 (2/14/95)(Monies received from cemetery lot sales may be spent to purchase a truck, or other equipment, to be used solely for the upkeep and maintenance of the cemetery, but only after an appropriation). Also found under SPECIAL FUNDS.

92-1041 (12/2/92)
Gifts/Grants.
Revenues.
Payments to Lead Municipalities under Joint Service Agreements.
Payments by municipalities participating in a joint service agreement to the lead municipality are not grants under G.L. Ch. 44 §53A, but are contractual payments, and they may not be spent by the lead municipality without appropriation. The lead municipality should appropriate the full cost of the joint enterprise in its budget and treat payments from the other communities as estimated receipts for the year.

92-1053 (2/2/93)
Tax Possession Proceeds.
Free Cash.
Revenues.
Earmarking of Tax Possession Proceeds into Fund for Land Acquisitions.
Proceeds from the sale of any tax title possession property are general revenue, which become part of available funds (free cash) upon certification by the director of accounts under G.L. Ch. 59 §23. A municipality cannot place the proceeds in a separate fund and reserve them for future appropriation for a restricted purpose, such as the purchase of open space, without specific legislative authority to do so. **Also see 92-1065 (12/15/92).** Also found under TOWN MEETINGS.

92-1078 (1/21/93)
Estimated Receipts.
Responsibility for Estimating Receipts to Set Tax Rate.
The amount of local estimated receipts to use in setting the annual tax rate is determined by the official or officials responsible for estimating receipts for budget purposes, not the assessors.

93-154 (3/10/93)
Overlay.
Determination of Overlay Surplus.
Deduction of Uncollected Taxes.
Uncollected personal property taxes, as well as any uncollected real estate taxes not secured by a tax title, are deducted from the overlay balance to determine the amount of any surplus under G.L. Ch. 59 §25.

93-157 (3/16/93)
Fees/Fines.
Revenues.
Earmarking of Tree Planting Fees into Fund.
A municipality cannot create a "trust" fund for fees imposed on property owners under a by-law for not meeting certain town development regulations regarding tree plantings and reserve them for future appropriation for a restricted purpose, such as planting and maintaining trees, without specific legislative authority to do so. The fees are general revenue under G.L. Ch. 44 §53.

93-159 (3/3/93)
Gifts/Grants.
Interest.
Interest Earned on Shared Proceeds from State/Federal Drug Forfeitures.
Interest earned on cash seized or proceeds received from the sale of forfeited property obtained from joint drug related law enforcement actions belongs to the general fund, not the law enforcement trust fund established by G.L. Ch. 94C §47, if the funds are received from the commonwealth. **Also see IGR No. 90-209 "Law Enforcement Trust Fund" (January 1990).** However, if the funds are received from the federal government, they are treated as grant funds under G.L. Ch. 44 §53A and current federal forfeiture guidelines, which may be construed as establishing conditions of the grant, require any interest to remain with the funds and be used for law enforcement purposes. Also found under SPECIAL FUNDS.

93-200 (3/25/93)
Restitution Proceeds.
Revenues.
Reimbursement of Fire Department Expenses in Responding to Hazardous Waste Materials Incidents.
Funds received by the fire department from a private company to reimburse the department for the personnel and equipment costs associated with responding to an accident involving hazardous materials cannot be spent by the fire chief for fire department purposes without appropriation. The funds are general revenue under G.L. Ch. 44 §53, and do not come within the statute's restitution exception because they were not received for damage to any particular town property and are not being used to repair or replace that property.

93-361 (5/3/93)
Real Estate Sale Proceeds.
Interest.
Revenues.
Interest Earned on Real Estate Sales Proceeds.
Interest income earned on the proceeds of real estate sales, which may only be spent for restricted purposes under G.L. Ch. 44 §63, is revenue belonging to the general fund. G.L. Ch. 44 §53.

93-483 (6/18/93)
Revenues.
Enterprises.
Betterments/Special Assessments and Committed Interest.
Receipts from apportioned or unapportioned betterments and special assessments, including committed interest, belong to the general fund under G.L. Ch. 44 §53, or the enterprise fund under G.L. Ch. 44 §53F½ if the municipality has adopted an enterprise fund for the improvement or facility for which the betterments are assessed. **Also see 93-295 (4/28/93) (Monies from apportioned and unapportioned betterments and special assessments are general revenues under G.L. Ch. 44 §53, unless the municipality has adopted an enterprise fund for the capital improvements for which the betterments were assessed. In that case, they are to be credited to the enterprise fund under G.L. Ch. 44 §53F½).** Also found under SPECIAL FUNDS.

93-733 (9/3/93)
Fees/Fines.
Receipts Reserved for Appropriation.
Ambulance Service Fees.
Use of Ambulance Receipts to Pay Firefighter Salaries.
A municipality may appropriate ambulance service fees deposited into the ambulance receipts reserved for appropriation fund established under G.L. Ch. 40 §5F to pay for firefighter salaries, which would be a cost of providing ambulance service if that service is provided by the fire department. Nothing in the statute prohibits the appropriation of such funds for other purposes, however. See G.L. Ch. 44 §33B. Also found under **SPECIAL FUNDS**.

93-735 (1/26/94)
Tax Title Proceeds.
Revenues.
Tax Title Assignment Proceeds.
Surplus proceeds from the assignment of a tax title account are general revenue of the municipality. The assignee does not acquire any right to possession of, or receive any rent or income from, the tax title property. The assignee is entitled to collect only 6.5% interest, not the 16% owed to a municipality, under G.L. Ch. 60 §62. Subsequent years' taxes for the property must still be assessed and billed to the owner of record, not the assignee. An assignee selling property after acquiring title through a land court foreclosure does not have to pay any surplus proceeds to persons who could have redeemed the property before foreclosure. **Also see 91-480 (5/24/91) (Any proceeds received from an assignment of a tax title in excess of the amount of taxes, interest and charges is ordinary municipal revenue).** Also found under **COLLECTION PROCEDURES**.

93-940 (12/15/93)
Trust Funds.
Accounting for Library Trust Fund Receipts and Expenditures.
The board of library trustees is required to submit information related to library trust fund receipts and expenditures to the town accountant under G.L. Ch. 41 §61 for inclusion in the town report, which should be accounted for and reported on an "expendable" and "non-expendable" basis. In addition, under G.L. Ch. 78 §12, the trustees are to annually prepare a comprehensive report of their activities which is to include information relating to the administration of trust funds and statements of unexpended balances. Also found under **SPECIAL FUNDS**.

94-446 (8/8/94)
Fees/Fines.
Revenues.
Conservation Commission Regulatory Fines.
Regulatory fines or penalties imposed by a local conservation commission may not be deposited in the wetlands protection fund, nor spent without appropriation by the commission. Only certain filing fees may be deposited in the wetlands protection fund, and since there is no revolving or special fund authorized for the fines or penalties in question, they are revenue belonging to the general fund under G.L. Ch. 44 §53. Also found under **SPECIAL FUNDS**.

94-581 (2/27/95)
Trust Funds.
Perpetual Care Fees Paid As Condition of Burial.
Where a municipality does not charge for the sale of a cemetery lot, but requires payment of a "perpetual care fee" of $200 per grave before a burial may take place, the fees should be treated as perpetual care trust funds for municipal accounting and expenditure purposes under G.L. Ch. 44 §§25 and 54. While the payment is not a voluntary one, *i.e.*, a gift or bequest, it is paid with the expectation that the town will hold and invest it to produce income for the regular care of the particular lot. Therefore, it is essentially received in trust by the municipality.

95-03 (3/2/95)
Estimated Receipts.
Revenues.
Appropriation of Estimated Water Revenues for Water Expenses Budgeted in Other Departments. Calculation of Year End Surplus.
A district that has not accepted G.L. Ch. 41 §69B, but whose enabling legislation includes almost identical provisions, may appropriate from anticipated water revenues for all direct and indirect water system operating expenses, including debt service, regardless of where they are budgeted, *i.e.* in the water department, treasurer's office, prudential committee or other budgetary accounts. The amount appropriated from anticipated water revenues should be used as an estimated receipt when setting the tax rate and any revenues in excess of that amount would be the "net surplus" that is available for appropriation for new system construction or to reduce the water rates. Also found under **SPECIAL FUNDS**.

95-46 (5/16/95)
Fees/Fines.
Receipts Reserved for Appropriation.
Revolving Funds.
Use of Dog/Kennel License Fees for Library Purposes.
A town may authorize by by-law a 75 cents per dog or kennel license fee and direct its distribution for library purposes, in accordance with the same type of distribution provided under the county dog licensing system, under G.L. Ch. 140 §§147A and 172. However, the distribution creates a receipts reserved for appropriation account that may be used for library purposes. A departmental revolving fund could not be established under G.L. Ch. 44 §53E½ in this case since the license receipts being generated are not being used to support dog programs. Also found under **SPECIAL FUNDS**.

95-48 (4/6/95)
Performance/Security Deposits.
Interest.
Return of Interest to Parties Posting Cash in Lieu of Performance Bonds.
Expenditure of Performance/ Security Deposits.
Cities and towns may receive cash payments in lieu of performance bonds to guarantee subdivision completion under G.L. Ch. 41 §81U, or other obligations required of private parties under other statutes, and all such payments should be deposited with the municipal treasurer and accounted for separately. If and when the required obligations and services are fully performed, and the department head responsible for the underlying project has so certified, the treasurer must release the funds to the party depositing them. Any interest on the funds would belong to the general fund, rather than the private party in the absence of an express statutory provision. In the event performance is not completed and the municipality is entitled to use some or all of the funds, a prior appropriation is required, except where expressly provided by statute, as in the case of certain subdivision deposits.

95-221 (7/6/95)
Real Estate Sale Proceeds.
Revenues.
Receipts from Leases of Agricultural Land.
Revenues from the lease of agricultural land under the control of the conservation commission belong to the general fund under G.L. Ch 44 §53, not to the conservation fund established by G.L. Ch. 40 §8C. Nor can the revenues be considered proceeds from the sale of park land to be used for capital improvements for the land under G.L. Ch. 44 §63, because a lease is not a sale or disposition of real estate and agricultural land under the control of the conservation commission is not park land for purposes of the statute. Also found under **SPECIAL FUNDS**.

95-228 (4/18/95)
Fees/Fines.
Revolving Funds.
Revenues.
Use of Teleprocessing Fees for Motor Vehicle Excises Paid by Credit Cards to Compensate Collection Services.
A $2.95 teleprocessing fee added to the motor vehicle excise bill of those taxpayers electing to pay their bill by credit card over the telephone cannot be retained by the company that makes the service available to cities and towns as compensation for that service. All fees must be paid over to the communities, along with the excises, and any compensation for the service would have to paid through an appropriation in the collector's regular expense budget, or for these particular contractual services. If budgeting is difficult due to inability to estimate the number of people who may pay by credit card, a municipality may establish a revolving fund under G.L. Ch. 44 §53E½ to which the teleprocessing fees may be credited and from which the company may be paid upon proper billing. Also found under **FINANCIAL MANAGEMENT; SPECIAL FUNDS**.

95-266 (3/29/95)
Funds.
Gifts/Grants.
Interest.
Revenues.
Earmarking of Current/Future Interest Earnings on State Library Grants into Stabilization Fund for Public Libraries.
Town meeting may not vote to direct that current and future interest earnings on state library grants be placed in a stabilization account for the public library. The earnings are general fund revenue under G.L. Ch. 44 §53 and are available for appropriation for any lawful municipal purposes. Town meeting cannot bind future town meetings, or restrict their discretion, in making appropriations of such funds in the future. Also found under **TOWN MEETINGS**.

95-292 (4/7/95)
Gifts/Grants.
Funds.
Pension Costs of Employees Paid from Federal Grants.
Federal grant funds paid to municipalities to cover the projected retirement costs of employees paid from the grants are to be placed in the pension fund established by G.L. Ch. 32 §22, along with other amounts appropriated by the municipality for such purposes. G.L. Ch. 40 §5D. There is no express requirement that federal grant funds be kept physically separate from other funds deposited in the fund. Subject to actuarial approval, pension reserve funds may be used for funding pension benefit costs for municipal employees, including those paid from federal grants. Such amounts may only be used to pay the municipality's contribution, not the employee's contribution. **Also see IGR No. 90-106 "Pension Charges to Federal Grants" (March 1990).** Also found under **SPECIAL FUNDS**.

95-545 (5/26/95)
Reimbursements.
Revenues.
Medicaid Reimbursements for Medical Services Provided to Special Needs Students.
Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72. Expenditures for special medical care must be routinely anticipated and regularly provided for in the school annual operating budget and should not be premised upon receipt of reimbursement. Also see **93-1031 (12/22/93) (Any funds received as reimbursement for providing medically necessary services for special needs students under the federal Medicaid program belong to a municipality's general fund, not to the school department, and cannot be spent without appropriation. G.L. Ch. 44 §§53 and 72); 94-102 (5/17/94) (Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72); 95-444 (5/25/95).** Also found under **SCHOOLS; SPECIAL FUNDS**.

95-586 (6/20/95)
Reimbursements.
Funds.
Earmarking of Future State Reimbursements for Conservation Purchases to Conservation Fund.
A provision of an appropriation for the conservation fund established under G.L. Ch. 40 §8C for land acquisitions that makes the selectmen the administrators of the fund is ineffective, because the statute vests the power to purchase such lands exclusively in the conservation commission. Therefore, the commission may spend the unexpended balance of the fund for land acquisitions without the approval of the selectmen. Any reimbursements received by the town from the commonwealth for monies it has already spent for conservation land purchases belong to the general fund if the acquisitions were funded from the conservation fund, the tax levy, free cash or other available fund, and town meeting cannot dedicate them in advance of receipt and certification as free cash to a particular fund or use. However, if the town incurred debt to finance the acquisitions, the reimbursements must be reserved for appropriation to pay the remaining debt service on the acquisition loan as it becomes due. G.L. Ch. 132A §11. Any balance remaining after the loan is repaid may be appropriated by town meeting for any other use or be closed to surplus revenue to be certified as part of the town's free cash. Also found under **SPECIAL FUNDS; TOWN MEETINGS.**

95-688 (7/25/95)
Fees/Fines.
Revenues.
Earmarking of Wetlands Protection Consultant Fees.
Consultant fees charged by the conservation commission to applicants seeking permits under the wetlands protection act, G.L. Ch. 131 §30, in order to pay for the reasonable expenses of engaging experts to assist the commission review the application, are general fund revenue under G.L. Ch. 44 §53 and cannot be dedicated by by-law to a special fund to be spent by the commission without appropriation for the necessary services, with the balance to be returned to the applicant, because the authority under G.L. Ch. 44 §53G for such consultants' funds does not apply to the conservation commission and there is no other statutory authority for such a fund. Also found under **HOME RULE; SPECIAL FUNDS**.

95-748 (7/27/95)
Overlay.
Abatement of Taxes in Tax Title Accounts.
An abatement of taxes certified to a tax title account by the collector under G.L. Ch. 60 §61 should be charged to the overlay, with any reduction in interest reflected in an adjustment to the tax title receivable account. The collector should give the treasurer and accountant an amended certification of the amount of the tax, together with an interest calculation on the unpaid balance of the tax as abated up to the date of the original certification, with a copy of the abatement certificate. Also found under **COLLECTION PROCEDURES**.

Agricultural and Horticultural Land (Ch. 61A)

89-13 (3/24/89)
Conveyance Taxes.
Roll-back Taxes.
Changes in Use of Land Not Currently Classified.
A conveyance tax (or roll-back tax if greater) is to be assessed in any instance (other than exempted transfers) where farmland is sold for or changed to another use within ten years of acquisition if the land was classified at any time during that ten year period. Current classification is not a prerequisite to imposition of a penalty tax under G.L. Ch. 61A §§12 or 13.

91-1018 (3/4/92)
Applications.
Application Deadline.
Applicability of Revaluation Year Filing Extension to Minimum Reassessment Programs.
The revaluation year filing extension applies in any fiscal year in which the assessors undertake a review of property values and adjust assessments according to the current market.

92-215 (5/1/92)
Minimum Acreage.
Qualification of Noncontiguous "Satellite" Parcels Necessary to Farm Operation.
"Satellite" or separate parcels or tracts of land not adjacent or contiguous to farmland classified under G.L. Ch. 61A that are productive or are necessary or related to the overall farm operation must be five or more acres in order to qualify for classification.

92-377 (7/1/92)
Farm Uses.
Gross Sales.
Product Development Times.
Qualification of Forest Cutting and Other Cranberry Bog Preparation Activities.
The sale of forest products cut under a forest cutting certificate, not a management plan, for the purpose of clearing the land for cranberry bogs does not qualify as a farm use under G.L. Ch. 61A §2. Activities undertaken prior to any cultivation of land for cranberry production, such as planning, permitting, tree and brush clearing, clearing for sand pits, and designing and constructing the irrigation system, are not part of the normal product development for a cranberry bog and do not qualify the land for Ch. 61A classification for up to two years despite the failure to meet the gross sales requirement of G.L. Ch. 61A §3.

92-421 (5/28/92)
Conveyance Taxes.
Roll-back Taxes.
Sales for/Changes in Use to Family Residences.
Classified farmland transferred to a family member for the purpose of building a home is subject to a roll-back tax (or conveyance tax if applicable and greater) for the change in use even though the transfer does not trigger the right of first refusal to purchase the land the municipality ordinarily has under G.L. Ch. 61A §14.

92-507 (10/13/92)
Conveyance Taxes.
Roll-back Taxes.
Changes in Use After Acquisitions At Mortgage Foreclosure Sales.
A property owner who purchased classified farmland from a bank foreclosing on a mortgage and subsequently discontinued the farm use is subject to a conveyance tax (if greater than the roll-back tax) computed from the date the owner acquired the land from the bank.

92-756 (10/27/92)
Contiguous Land.
Minimum Acreage.
Qualification of Cultivated Areas of Less Than Five Acres Within Larger, Contiguous Tract.
Conveyance Taxes.
Changes in Form of Ownership.
Areas of cultivated farmland, some of which are less than five acres, that are located within a larger tract of contiguous land under the same ownership may qualify for classification under G.L. Ch. 61A if the total of all such areas exceeds five acres. A property owner who acquired a parcel over ten years ago, conveyed it to a trust of which he was the sole trustee several years later, and subsequently reconveyed it to himself, was the legal owner of the property during the entire period, whether he had outright ownership or ownership in trust, and any sale or conversion of the land for another use would not be subject to a conveyance tax.

92-834 (9/25/92)
Roll-back Taxes.
Assessment of Roll-back Taxes to Current Owners.
A roll-back tax on a parcel of land formerly classified as farmland that was sold without notice to the municipality and then converted by the new owner to another use should be assessed to the current, not former owner, under G.L. Ch. 61A §16.

93-41 (3/31/93)
Conveyance Taxes.
Roll-back Taxes.
Proposed Sales Without Changes in Use.
Use of Commercial Tax Rate to Compute Roll-back Taxes.
Placing classified farmland on the market, or giving a municipality notice of intent to sell it under G.L. Ch. 61A §14, does not trigger assessment of a penalty tax or disqualify the land from classification

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if the land is still being used for agricultural or horticultural purposes. The roll-back tax is computed using the commercial tax rate for each of the roll-back fiscal years. G.L. Ch. 61A §13. **Also see 93-61 (3/31/93).**

93-60 (4/2)
Roll-back Taxes.
Exemption from Roll-back Taxes for Non-profit Conservation Organizations Assigned Options to Purchase When Part of Land Sold as House Lot.
A non-profit conservation organization, which is assigned a town's first refusal option on classified farmland, acquires the land and plans to sell a portion for a residential house lot in order to partially finance the acquisition, is subject to a roll-back tax on that lot when the agricultural or horticultural use is discontinued. The exemption from a roll-back tax under G.L. Ch. 61A §13 for cities and towns that acquire classified farmland for a public purpose does not apply to non-profit organizations.

93-260 (4/26/93)
Farm Uses.
Qualification of Horse Riding Stables.
Gross Sales.
Horse Boarding and Riding Revenues.
An eight acre parcel of land used primarily for the boarding, recreational riding and show training of horses is not actively devoted to farming and does not qualify for classification under G.L. Ch. 61A where the animals are not routinely sold upon maturity and the gross receipts are generated mostly from boarding and riding activities, not the regular sale of the animals.

93-608 (8/5/93)
Options to Purchase.
Payment of Bona Fide Offer Purchase Price.
A municipality must pay the proposed purchase price shown in an executed purchase and sales agreement to exercise its option to purchase classified farmland under G.L. Ch. 61A §14 if the agreement price reflects an arms-length, bona fide offer with no other consideration involved, and the offer does not include any non-classified real estate.

93-855 (11/30/93)
Farm Uses.
Qualification of Commercial Woodland and Christmas Tree Production.
Non-productive Contiguous Land.
Qualification of Open and Natural Woodland.
Timberland, woodland or wood lots used or managed in a commercial manner must be the subject of an approved management plan and state forester's certificate to qualify as productive farmland and classification under G.L. Ch. 61A. However, open and natural woodland not used productively or commercially may qualify as non-productive contiguous land up to the amount of qualifying productive farmland. Christmas tree acreage is included within the class of "trees, nursery or greenhouse products, and ornamental plants and shrubs" and therefore, may qualify as productive farmland without an approved management plan and state forester's certificate.

94-19 (2/8/94)
Farm Uses.
Non-productive Contiguous Land.
Qualification of Commercial Gravel Pits.
Roll-back Taxes.
Abatement of Delinquent Roll-back Taxes.
Land used for gravel extraction and soil removal for commercial sale does not qualify for classification under G.L. Ch. 61A §4 as land actively cultivated for farm production, nor does it qualify as non-productive contiguous land because of its commercial use. If gravel extraction is initiated on classified land, a change of use has occurred and a roll-back tax would be assessed. A roll-back tax is due immediately and if not paid within 30 days of billing, interest at the rate of 14% per annum accrues. Failure to timely pay the roll-back tax does not preclude the property owner from seeking an abatement of the tax from the assessors and an appeal to the Appellate Tax Board, but interest will continue to accrue during the abatement and appeal process and will be payable to the extent that a full or partial abatement is not granted. **Also see 93-720 (11/4/93) (The part of a 37 acre parcel of land currently used to extract gravel and fill for commercial sale does not qualify for classification under G.L. Ch. 61A §4 as either land actively cultivated for farm production or as non-productive contiguous land not devoted to a commercial use.); 94-154 (5/6/94) (Land used to extract gravel for commercial sale does not qualify for classification under G.L. Ch. 61A as "related" land even if additional farmland may result in the future from the extraction of the gravel and replacement with topsoil, because the mining activity is not related or necessary to the current farmland production).**

94-620 (7/25/94)
Options to Purchase.
Imminent Sale or Conversion Required to Trigger Notice of Intent and Option to Purchase.
Calculation of Option Periods.
A present intention to sell or convert land classified as farmland under G.L. Ch. 61A to a residential, commercial or industrial use is required before a landowner may give notice to a municipality and trigger its option to purchase the land under G.L. Ch. 61A §14. It is not sufficient that the landowner plans to sell or convert the land in the indefinite or distant future. In the case of an intended sale, a signed purchase and sales agreement, or other bona fide offer, must exist from a purchaser who intends to change the use of the land, before a notice of intent may be issued. If the landowner intends to convert the use while retaining ownership, a potential buyer or pending sale is not required, but the landowner may have to demonstrate an actual current intent to convert, such as by filing a subdivision plan. The option period runs for 120 days from the latest date of deposit in the mail (via certified mail) to the board of selectmen, board of assessors, planning board and conservation commission, if any, of notice of the landowner's present intention to sell or convert, or earlier date when notice of refusal of the option is received by the landowner.

94-955 (2/13/95)
Roll-back Taxes.
Abatement of Paid Roll-back Taxes Where Proposed Sale for Development Does Not Occur. Effect of Failure to Record Lien Statements on Validity of Roll-back Taxes.
A paid roll-back tax assessed at the request of a landowner who was selling a parcel subject to a forest management plan under Ch. 61A (or Ch. 61) for development under an executed purchase and sales agreement that required any lien to be released, may not be abated by the board of assessors on the basis that no change in use occurred when the proposed sale did not take place and the property owner eventually sold the land for conservation purposes to the commonwealth, acting through the department of environmental protection, if a timely filed abatement application was not filed by the taxpayer. Since the land remains natural and open, the town may determine that this is a unique situation where a refund would be equitable and if so, could submit a home rule petition to the legislature in order to provide relief to the taxpayer. The failure to record a lien statement under the classification statute does not affect the validity of a roll-back tax, as the tax lien simply affords the municipality an alternative collection remedy for outstanding taxes, *i.e.*, the tax taking and foreclosure procedure.

94-1018 (2/14/95)
Roll-back Taxes.
Conveyance Taxes.
Subdivision Plan Filings.
Failure to Apply for Current Classification.
Liability for a roll-back, or conveyance tax if greater, under G.L. Ch. 61A §16 is triggered when classified farmland is no longer "actively devoted" to agriculture, and the mere filing of a subdivision plan, or failure to file an application for continued classification, is not sufficient for the board of assessors to assess the tax. Rather, the assessors must monitor the actual activity upon the land and when the land ceases to be cultivated, or maintained in direct agricultural or horticultural use, the appropriate tax should be assessed.

94-1033 (1/9/95)
Options to Purchase.
Effective Period of Current Classification for Notice of Intent and Option to Purchase Purposes.
Classification under G.L. Ch. 61A is effective for a full fiscal year and a parcel ceases to be "valued, assessed and taxed" under the provisions of G.L. Ch. 61A as of the June thirtieth conclusion of the fiscal year. Thus, a sale or conversion to another use at any time in a fiscal year in which a parcel was classified is subject to the notice and option provisions of G.L. Ch. 61A §14. A landowner may not "declassify" as of a day during the tax year by simply paying a penalty tax, and thereby avoid the notice and option provisions upon changing the use of the land immediately thereafter.

95-145 (5/11/95)
Options to Purchase.
Adequacy of Notices of Intent to Sell.
A notice of intent to sell classified farmland given to the town clerk with a request that it be directed to the required boards (selectmen, assessors, planning and conservation) may not be adequate since G.L. Ch. 61A §14 requires specific notice by certified mail to each board. The notice must include a statement of intent to sell for non-classified purposes, a sufficient legal description of the property being sold and the proposed sales price. The 120-day option period would not start until the town received a sufficient notice.

95-377 (6/20/95)
Minimum Acreage.
Exclusion of Residential Land Based on Zoning Requirements.
Any portion of land attributed to residential use based on the minimum residential lot size permitted by the municipality's zoning laws must be used to satisfy the five acre minimum acreage requirement for classification as farmland under G.L. Ch. 61A if it is actually cultivated, or for classification as recreational land under G.L. Ch. 61B if it is actually used for a qualifying recreational use. It cannot be automatically excluded. Also found under **RECREATIONAL LAND (CH. 61B)**.

95-1013 (10/18/95)
Applications.
Sunday Filing Deadlines.
When the deadline for filing an application for farmland classification under G.L. Ch. 61A §6 falls on Sunday, October first, the application may be timely filed on Monday, October second under G.L. Ch. 4 §9, which provides that whenever any legal act must be performed on a date which falls on a Sunday or legal holiday, the act may legally be performed on the next succeeding business day.

Appropriations 4

91-184 (4/26/91)
Contingent Appropriations.
Appropriations Without Proposition 2½ Contingencies Under Contingent Warrant Articles.
Funding Sources.
Appropriations from Available Funds under "Raise and Appropriate" Warrant Articles.
A town may vote appropriations under warrant articles with language making the proposed appropriations contingent upon a Proposition 2½ ballot question with or without the contingency. It may also appropriate from free cash or other available funds under warrant articles providing that the proposed appropriations are to be funded from the tax levy. Also found under **PROPOSITION 2½; TOWN MEETINGS**.

91-305 (5/6/91)
Contingent Appropriations.
Annual Regional School Budget Assessments.
A town may make all or a portion of the amount appropriated for a regional school district assessment contingent upon passage of a levy limit override. Any portion subject to the contingency becomes an effective appropriation if the override passes within the time frame set forth in G.L. Ch. 59 §21C(m), and assuming that the total amount appropriated then equals or exceeds the town's assessed share of the district budget, the budget is approved by the town at that time. If the override fails, the budget is disapproved by the town. Any amount appropriated without the contingency is still a valid appropriation and available to fund the town's assessment under the original budget, should it be approved by the required number of other member communities, or any amended budget submitted to the members if the original budget is not approved by the members. Also found under **PROPOSITION 2½; SCHOOLS**.

92-39 (2/6/92)
Contingent Appropriations.
School Debt Authorizations Contingent Upon Overrides for Funds to Operate Schools.
Effect of Contingent Appropriation Votes on Placement of Referenda Questions on Ballots.
A town may not authorize debt for the construction of a new school contingent upon approval of both a debt service exclusion for that appropriation and an override to provide funds for future expenses associated with operating the new school. Under G.L. Ch. 59 §21C(m), an appropriation may be made contingent upon the subsequent approval of a Proposition 2½ referendum question for that particular appropriation only. A town meeting vote to appropriate funds for a particular purpose contingent upon a Proposition 2½ referendum question does not place the question on the ballot. Only the board of selectmen can place a referendum question on the ballot in a town. Also found under **PROPOSITION 2½**.

92-70 (1/30/92)
Collective Bargaining.
Transfers.
Funding Raises Under New Collective Bargaining Agreements from "Contract Reserve" Funds.
A town meeting vote is required to transfer funds from an appropriation for anticipated wage increases and/or expense budget costs associated with collective bargaining agreements to be negotiated during the year to the appropriate departmental salary and expense items before any increased wages or other contract costs may be paid. Also found under **FINANCIAL MANAGEMENT**.

92-438 (6/8/92)
Anti-aid Amendment.
Public Purposes.
Funding Headquarters for Veterans' Organizations.
A municipality may appropriate funds to provide headquarters for a veterans' organization without violating the Anti-aid Amendment to the Massachusetts Constitution. G.L. Ch. 40 §9. The reasonable use of public money for those purposes serves a valid public purpose of recognizing valuable war-time service and promoting patriotism.

92-725 (9/10/92)
Form.
Out-of-state Travel Expenses as Separate Appropriations.
Municipalities no longer have to appropriate funds for out-of-state travel expenses as a separate line item in the budget under G.L. Ch. 40 §5, nor are there any limitations on those appropriations. If a community does not establish a separate line item for out-of-state travel expenses, all travel expenses, both in-state and out-of state, would be charged to the same appropriation.

92-744 (9/10/92)
Gratuities.
Municipal Purposes.
Funeral Flowers.
Retirement Parties and Gifts.
Business Meals/Tips.
Business Meeting Refreshments.
Tips to Employees.
A municipality may not spend public funds to pay for funeral flowers or sympathy cards for deceased employees or their relatives because they do not further a municipal purpose but are rather personal expressions of support. Paying for a retiree's dinner at a retirement party, or a reasonably inexpensive gift in appreciation for the retiree's service, promotes productivity and loyalty and would be a

proper municipal purpose, but should be paid from a separate appropriation for such expenses rather than a department's general expense account. Refreshments at a meeting for municipal officers or employees and persons doing business with the municipality, and reasonable tips on business meals otherwise reimbursable by the municipality, would also be proper municipal expenditures. A tip to a municipal bus driver already being paid a wage or salary by the town for such service would be an inappropriate expense from municipal funds, even if made from student fees.

92-792 (9/3/92)
Anti-aid Amendment.
Public Purposes.
Financial Assistance to Private Businesses.
A municipality may not pledge some of its property to guarantee a loan to a local business without violating the Anti-aid Amendment to the Massachusetts Constitution. The benefit to the public from the continued operation of the business is not sufficient to make its financial support a public purpose. Also found under **PUBLIC PROPERTY**.

92-836 (3/16/93)
Transfers.
Delegation of Town Meeting Power to Transfer Appropriations to Finance Committees.
A town meeting cannot delegate its authority to transfer funds between separate appropriations under G.L. Ch. 44 §33B to the finance committee or other officer. Also found under **TOWN MEETINGS**.

92-908 (10/9/92)
Free Cash.
Transfers.
Appropriation from Free Cash.
Certified free cash is an unappropriated fund balance available for appropriation at any time and therefore, an appropriation from free cash is not a transfer of an appropriation previously made for another use as intended by G.L. Ch. 44 §33B. The requirements of that statute only apply to funds previously appropriated and still restricted to another use at the time of the transfer vote.

92-1015 (11/25/92)
Municipal Purposes.
Firefighters' Protective Clothing/Turnout Gear.
A town may purchase protective clothing and turnout gear, such as helmets, boots, pants and water jackets, for the use of firefighters during the performance of their duties without accepting G.L. Ch. 40 §6B, which permits the purchase of uniforms and other outer clothing directly for public safety personnel. The turnout gear, which will be owned by the town, not the individuals, and worn for safety purposes during an emergency, is not the type of clothing specified in the statute.

92-1079 (1/19/93)
Contingent Appropriations.
Calculation of Deadline for Holding Elections.
The deadline established by G.L. Ch. 59 §21C(m) for holding elections on a Proposition 2½ ballot question intended to put a contingent appropriation into effect is measured from the date town meeting last votes on the contingent appropriation, not the date town meeting adjourns. Also found under **PROPOSITION 2½**.

93-213 (3/24/93)
Municipal Purposes.
Public Purposes.
Replacement of Private Septic Systems.
An appropriation to assist older residents of limited income meet the cost of replacing their septic systems is not a municipal purpose where the systems are not threatening the water supply or otherwise endangering public health. **Also see G.L. Ch. 111 §127B½ which permits municipal expenditures for septic system repair or replacement where they may violate health standards and the property owner agrees to repay the municipality, with interest, for the project and IGR 94-208 "Municipal Funding of Residential Improvements to Meet Certain Public Health Code Requirements" (November 1994).**

93-286 (5/11/93)
Scope.
Purchase of Computers from Departmental "Capital Items" Line Item Appropriations.
An appropriation for "Capital Items," which was voted by town meeting as a separate line item in a department's annual budget, may be used to purchase a computer for departmental purposes in the absence of evidence that town meeting explicitly or implicitly rejected a computer purchase by the department, or imposed some limitation on the nature of the capital items the department could purchase from the appropriation.

93-564 (8/12/94)
Anti-aid Amendment.
Public Purposes.
Grants/Contributions to and Contracts with Non-profit Organizations.
A municipality may not grant public funds to charitable, educational, religious or other private organizations, no matter how worthy, for the purpose of supporting or assisting their operations. It may appropriate funds to purchase specific services from those organizations in order to accomplish a public purpose, provided the specific services and payment schedule are identified in the contract and payment for any particular service is made only after the service is provided. **Also see 92-887(10/6/92) (A municipality may not spend public funds to make a charitable contribution in memory of a deceased official or employee under the Anti-aid Amendment to the Massachusetts Constitution); 94-513 (6/16/94) (A municipality may not appropriate money to grant funds to a non-profit legal services corporation to reimburse it for the cost of providing legal services to certain residents of the town without contravening the Anti-aid Amendment to the Massachusetts Constitution. The proposed grant cannot be characterized as a contract for services since the money is not being paid in return for legal services provided the town, and the provision of legal services for town residents is not a municipal obligation).**

93-845 (11/23/93)
Contingent Appropriations.
Education Reform Spending Requirements.
A municipality may not vote to appropriate funds for the school operating budget "if required by the Education Reform Act" because the only valid contingent appropriations are those made subject to passage of a Proposition 2½ ballot question under G.L. Ch. 59 §21C(m). Also found under **SCHOOLS**.

94-74 (2/4/94)
Municipal Purposes.
Evaluation Expenses of High School Accreditation Organizations.
Meals During High School Evaluations.
The school committee may spend funds from its operating budget to pay for the "opening night meal", as well as out of pocket expenses, such as meals, travel, rooms, clerical and other related expenses, associated with the ten year evaluation and accreditation of the public schools by a private accreditation organization. The evaluation furthers an appropriate school purpose, of helping the school committee assess the effectiveness of its educational programs and plan for future activities, and the expenses appear to be ordinary expenses, reasonable in amount, charged by the organization for the evaluation in lieu of a direct charge for the service. Also found under **SCHOOLS**.

94-134 (3/16/94)
Municipal Purposes.
Snacks and Beverages at Community Receptions for New Superintendents.
The school committee may spend $188 in funds from its operating budget to pay for snack foods and beverages, and related expenses, for a reception given for the new school superintendent where the event was not purely a social event, but was for the purpose of introducing the superintendent to other municipal employees and members of the community and the costs incurred were for snacks and beverages of a minimal and reasonable amount and were shared with the teachers' association. Also found under **SCHOOLS**.

94-273 (12/8/94)
Available Funds.
Free Cash.
Funding Sources.
Effect of Appropriations From Unspecified "Available Funds".
An appropriation voted from "available funds" is a vote from free cash unless a particular available fund is identified and designated as the funding source. The use of the term "available funds" in the warrant article is intended to give town meeting flexibility in deciding how to finance the proposed expenditure, but in voting on the motion itself, town meeting has to specify the particular funding source being used.

94-447 (5/27/94 and 6/2/94)
Municipal Purposes.
Public Purposes.
Loans to Bankrupt Manufacturers for Asbestos and Hazardous Waste Contamination Testing.
A municipality may not appropriate and loan funds to a bankrupt company to use to inspect and test its abandoned manufacturing facility, which is located in the downtown area of the municipality and has been boarded up as a serious safety hazard, for asbestos and other hazardous waste. Specific legislative authority is required for cities and towns to loan public funds to private individuals or businesses to accomplish a public purpose indirectly rather than directly, and there is no such authority to make the loan proposed here. The municipality may, however, spend funds directly to identify asbestos and other conditions threatening public health and safety, and to develop a plan for their abatement.

94-624 (8/15/94)
Anti-aid Amendment.
Public Purposes.
Contributions for Private Feasibility Study About YMCA Relocation Downtown.
The finance committee may not transfer funds from the reserve fund established under G.L. Ch. 40 §6 to be contributed by the town to a private study of the feasibility of expanding the local YMCA and relocating it to a now vacant downtown location because such an expenditure is not for a proper public purpose. Even if the study provides some public benefits because it may impact town revitalization efforts, it is being undertaken primarily for the benefit of a charitable organization. Therefore, spending public funds on the study is prohibited by the Anti-aid Amendment to the Massachusetts Constitution. Also found under **SPECIAL FUNDS**.

94-631 (2/22/95)
Gratuities.
Municipal Purposes.
Appreciation Meals for Parks and Recreation Spring Beautification Program Volunteers.
The cost of an appreciation breakfast for the parks and recreation director, and other current and former town employees, who donate time each spring to plant flowers in a town park for beautification purposes may not be charged to the parks and recreation revolving fund under G.L. Ch. 44 §53D. There may be circumstances where a special employment arrangement or other legitimate municipal purpose may permit a municipality to pay for meals, but the sort of meal at issue here does not come within those circumstances and even if it did, the cost could only be paid from an appropriation intended for such a purpose. Also found under **SPECIAL FUNDS**.

94-1050 (12/28/94)
Anti-aid Amendment.
Municipal Purposes.
Donations to Private, Non-profit Organizations Litigating School Finance Issues.
A school committee may not spend funds from its operating budget to be paid over to a private, non-profit organization, "Council for Fair School Finance", for the purpose of paying the litigation expenses involved in bringing a lawsuit to challenge the school funding provisions of the 1993 Education Reform Act. A school committee may only pay for litigation counsel and costs under G.L. Ch. 71 §37F for cases in which it is a party, not for legal counsel of another school committee or private parties. Moreover, it is not clear that the school committee

could even bring a suit itself to litigate the school finance law since its involves constitutional issues that may not ordinarily be raised by state or local officers. Even if the committee had authority to litigate the issues, by donating funds to the Council, it would be paying for counsel under contract to a non-profit entity and there does not appear to be any contract with the Council for such legal services. If a contract did exist, no payments could be made in advance of the services being rendered. The donation appears to be for the purpose of supporting the non-profit organization which is direct contravention of the Anti-aid Amendment of the Massachusetts Constitution. Finally, such an expenditure is not within the scope of the school department's budget under G.L. Ch. 71 §34 and to the extent there is authority to challenge the school funding mechanisms, it is a general town responsibility, not a school committee one, which would require a specific appropriation for that purpose. Also found under **SCHOOLS**.

94-1059 (12/20/94)
Municipal Purposes.
Public Purposes.
Loans to Startup or Expanding Small Businesses.
A municipality may not appropriate and loan funds to small businesses to assist them with startup or expansion costs unless expressly authorized by statute. Amendment 88 of the Massachusetts Constitution provides that economic development is a public function, but it states that cities and towns may only assist in those efforts "in such manner as the general court may determine." Thus, municipalities may spend public funds in conjunction with economic development efforts only if acting pursuant to explicit statutory authority.

94-1078 (12/27/94)
Municipal Purposes.
Merit or Performance Bonuses.
A municipality may establish a merit or incentive bonus program for municipal employees provided it is reasonable in scope. A separate appropriation should be made for the awards and guidelines for the program should be set forth in a comprehensive vote or by-law. If union employees are involved, the municipality would have to bargain over the terms of the program.

95-30 (4/21/95)
Municipal Purposes.
Gratuities.
Merit Awards.
Employee Dinners and Parties.
A municipality may appropriate funds for purposes of rewarding employees with certain awards, but appropriations for employee dinners or parties would be considered a gratuity except where it is centered around a ceremony acknowledging the employee's successes and achievements. A separate appropriation should be made for the awards and guidelines should be set forth in a comprehensive vote or by-law. If union employees are involved, the municipality may have to bargain over the terms of any award program. In all cases, the amounts of the awards must be reasonable.

95-54 (1/30/95)
Municipal Purposes.
Property Tax Credits for Senior Citizens/Other Residents Who Perform Municipal Work.
A municipality may appropriate funds to hire senior citizens or certain other taxpayers to work for the municipality in order to defray part of their property taxes, provided the appropriation is to accomplish work that is of value to the town, not just to help needy residents pay their taxes. If the taxpayers are employees, they will have to be subject to withholding, insurance and other laws relating to public employees unless some exemption applies due to the total amount paid or hours worked. If they are independent contractors, then any relevant rules applicable to such contracts will apply. Participating taxpayers may as part of their employment or contractual relationship agree to have the net pay due them set-off against their outstanding taxes or other municipal bills. G.L. Ch. 60 §93. Also found under **COLLECTION PROCEDURES**.

95-267 (5/16/95)
Free Cash.
Appropriations from Uncertified Free Cash for Indeterminate Amount.
An appropriation vote of "up to one million dollars" from free cash to reduce the tax levy that was taken when the town's certified free cash balance was zero is of no effect where no free cash was applied to reduce the levy when the tax rate was set anyway. However, future appropriations should be based on the actual balance and should not be for an indefinite amount without a designation of the board or officer entitled to decide the amount to be used.

95-358 (5/2/95)
Municipal Purposes.
Gratuities.
Appropriations to Refund Property Taxes Where Application for Abatement Not Timely Filed.
Town meeting may not appropriate funds to effect a property tax abatement and refund to a taxpayer who did not timely file for the abatement. Any such action would constitute a gratuity since the taxpayer has no legal claim or right to the refund and a gratuity to a private individual is not a permissible use of public funds. Moreover, even if town meeting appropriated the funds, neither the town accountant, nor board of selectmen, may approve payment for such an expenditure under G.L. Ch. 41 §56. Also found under **FINANCIAL MANAGEMENT**.

95-378 (5/2/95)
Municipal Purposes.
Gratuities.
Settlement of Legal Claim for Back Vacation Pay for Former Town Employee.
Town meeting may vote to pay a sum of money to a particular former employee for vacation pay of prior years only if the employee has a colorable legal claim for entitlement to vacation pay and the amount is in settlement of the claim. If there is no such claim of entitlement, payment of such an amount would be an impermissible gratuity. **Also see 95-618 (7/7/95) (A vote at annual town meeting with 63% in favor of raising and appropriating**

$809.04 and authorizing and empowering the treasurer to grant vacation pay to a named individual for two prior years was valid only if it was a vote to settle a viable claim of entitlement to unpaid vacation. If the claim was unenforceable due to an insufficient appropriation in the fiscal year, a 4/5 vote would be required for the appropriation to be effective under G.L. Ch. 44 §64. Although it appeared that the employee in question had used all her vacation entitlement in one fiscal year and did not earn any in the other, the viability of any claim is a factual question. However, since the vote did not purport to be a claim settlement, and appeared to be a mere vote to grant authorization to the treasurer to pay a "moral obligation," it does not require such a payment).

95-525 (5/18/95)
Municipal Purposes.
Public Purposes.
Loans to Homeowners to Remove Hazardous Radiant Heat Panels.
An appropriation to assist residents remove and replace radiant panels placed in the ceilings of approximately 170 private homes may serve a public rather than private purpose where the fire chief has determined the panels have been the cause of a number of fires, pose a future fire hazard and had ordered them disconnected. However, special legislation is necessary to permit the municipality to advance the funds to property owner for such purposes with the understanding the funds are to be repaid and the amount secured by a lien on the property.

95-528 (5/24/95)
Tax Levy.
Appropriations from Future Years' Tax Levy.
Monies purportedly appropriated from the fiscal year 1997 tax levy at the 1995 annual town meeting must be raised in the fiscal year 1996 tax rate under G.L. Ch. 59 §23, which requires the assessors to raise in taxes all amounts appropriated since the last tax levy. Also found under **TOWN MEETINGS**.

95-591 (6/7/95)
Municipal Purposes.
Public Purposes.
Celebration of Town's 225th Anniversary.
A municipality may appropriate funds for the celebration of the 225th anniversary of its incorporation or settlement. The appropriation and expenditure of funds for the celebration of a municipal anniversary is a legitimate public purpose, but the monies cannot be placed into a special fund without legislative authorization. Under G.L. Ch. 44 §53I, cities and towns may only establish special funds for appropriations made for each of the five years preceding their 200th, 250th, 300th and 350th anniversaries. Also found under **SPECIAL FUNDS**.

95-674 (7/14/95)
Municipal Purposes.
Gratuities.
Student Award and Class Reunion Dinners.
A school department could pay from its operating budget the $10 per person charge for a student awards dinner that included meals for students receiving various achievement awards authorized by G.L. Ch. 71 §47, as well as for some school staff members who are responsible for the awards or attend for other school related purposes. However, the cost of renting a hall and kitchen and paying for a banquet for persons attending a 50th year graduates reunion and ceremonial dinner is not a student activity or award, nor does it appear to serve any educational purpose that would justify the expenditure of municipal funds. The event would seem to be more appropriately funded by a parent/teacher organization or private donations, although school staff attendees' meals could arguably be paid by the school department if attendance is required by the school committee for a valid school purpose. In this case, where the bill for the reunion dinners was already submitted in the same manner as in many previous years and services have been rendered in good faith by a vendor, payment could be made for the service this year, but another funding mechanism should be used in the future. Also found under **SCHOOLS**.

88-587 (11/22/88)
Assessed Owners.
Assessment of Actual Rather Than Record Owners Of Properties.
Deeds.
Unrecorded Deeds from Municipalities.
Persons who bought property from a municipality and have never recorded the deeds may be assessed taxes under G.L. Ch. 59 §11 as the actual owners.

89-834 (12/14/89)
Preliminary Taxes.
Use of Preliminary Tax Payments to Determine When Tax Paid and Calculate Interest Owned on Abatement Refunds.
Preliminary tax payments are considered payments for the purposes of determining when the fiscal year's tax, as abated, has been paid and calculating interest owed on abatement refunds. Also found under **ABATEMENTS AND APPEALS**.

91-228 (6/7/91)
Parcels.
Properties Separated By Roads.
Contiguous Lots in Separate/Same Deeds.
Property described in one deed that is bisected by a road into two "tracts", or divided by three roads into three sections, may be assessed as separate parcels or as a single parcel. Property owned by the same person that is contiguous, but is described in three separate deeds, may also be assessed as separate parcels or as a single unit. **Also see 93-748 (2/7/94) (Two contiguous lots conveyed by a single deed and used together as the site of an improvement, which is located entirely on one of the lots, but would not be a conforming use of that lot under the zoning code if it were a separate lot, may be assessed as a single parcel. Seven different contiguous lots used together as a golf course may be assessed as a single parcel, even if there is no recorded plan).**

91-768 (12/27/91)
Assessed Owners.
Tenancies.
Assessment Where Husband Conveys Property Held As Tenancy by the Entirety and Later Predeceases Wife.
A recorded transfer of property held by a husband and wife as tenants by the entirety by the husband to his son and daughter conveys his rights in the possession, enjoyment and income of the property during the marriage, as well as his future right to the entire property should he survive his wife. Upon his death, his wife becomes the sole owner of the property, although she is not the owner of record until his death certificate is recorded. Prior to the recording, the children should be considered the owners of record for assessment purposes under G.L. Ch. 59 §11 because the tenancies were created before February 11, 1980, the effective date of legislation giving a husband and wife equal rights in property held by them as tenants by the entirety, which means in this case that the husband had an exclusive, rather than equal, interest in the possession, enjoyment and income of the properties during the marriage. The acquisition of those present interests, as well as the husband's future survivorship interest, makes the children the owners of the property for all practical purposes.

92-224 (4/16/92)
Assessed Owners.
Assessment of Multiple Owners Where Space is Limited on Commitment and Bills.
The tax assessment and bill for a property with multiple owners should include the full names of all owners if possible. If computer or space limitations do not permit all names to be included, then the assessment and bill must include the full name of at least one owner for the assessment and lien to be valid. Also found under **TAX BILLS**.

92-234 (4/27/92)
Information Requests.
Assessors' Request for Agency/Tax Consultant Agreement Terms.
Information requested by the board of assessors regarding the details of an agency or tax consultant agreement entered into by a taxpayer for the purpose of obtaining an abatement, such as the terms and amount of compensation, is not reasonably necessary to determine a property's fair cash valuation and the taxpayer is not required to provide it under G.L. Ch. 59 §61A. However, the assessors may request information from the taxpayer or agent as is necessary to establish or confirm the scope of the agent's authority before them. Also found under **ABATEMENTS AND APPEALS**.

92-510 (6/4/92)
Assessed Owners.
Assessment of Cooperative Housing Projects.
Elderly occupants of a cooperative housing project are not eligible for personal property tax exemptions because units in a cooperative are not individually owned and taxed like condominium units. The property is owned by the cooperative housing corporation, not the occupants, and is to be assessed to the corporation as a single unit. Also found under **EXEMPTIONS**.

92-739 (9/9/92)
Life Estates.
Assessed Owners.
Tenancies.
Assessment of Properties Conveyed Subject to Life Estates.
A person who conveys her domicile to her son and reserves a life estate is the owner of the property during her lifetime for assessment purposes under G.L. Ch. 59 §11.

92-795 (12/21/92)
Leases.
Assessed Owners.
Tenancies.
Assessment of Lifetime Lessees.
A person who has been granted a lifetime lease by a sealed instrument has received a life tenancy, and if the lease has been recorded, is the owner of the property for assessment and personal exemption purposes. **Also see 93-827 (10/13/93); 93-806 (10/25/93) (A person who conveys title to her domicile to her daughter and on the same day enters into a lifetime lease of the property with the daughter under which in lieu of rent she is obligated to pay the mortgage, real estate taxes, general maintenance and repairs and utilities, holds a life estate determinable and satisfies the ownership requirement for a personal exemption).** Also found under EXEMPTIONS.

92-872 (10/23/92)
Trusts.
Assessed Owners.
Establishing Change of Trustees on Properties Held in Trusts.
Taxes on property held in trust should be assessed to the trustee(s) named in the recorded trust document until a change in legal title is established by recorded documents showing the appointment of an additional trustee or the resignation or death of a trustee, the appointment of a successor trustee and the written acceptance of the position by the new trustee. **Also see 95-281 (4/18/95).**

92-1070 (1/14/93).
Omitted/Revised Assessments.
Validity of Liens for Revised Assessments Made After Municipal Lien Certificates Issued.
A lien for a revised (or omitted) tax assessment is not discharged simply because a recorded municipal lien certificate issued before the assessment does not contain a statement that the taxes are unascertainable. **Also see 91-429 (7/2/91).** Also found under COLLECTION PROCEDURES; LIENS.

93-86 (2/2/93)
Local Options.
Adoption of Local Option Property Tax Exemptions by Districts.
The property tax exemptions provided under G.L. Ch. 59 §5 apply to district as well as municipal property taxes. If the district wishes to have any of the local option exemptions apply to its tax, such as clauses 17D, 41C or 50, the optional exemption statute must be accepted by vote of the district meeting. Also found under DISTRICTS; EXEMPTIONS.

93-363 (5/14/93)
Tax Agreements.
Assessment Standards.
Assessments on Basis Other Than Fair Market Value.
The fair market valuation standard for property tax purposes cannot be varied by local assessors or by agreement of a municipality and taxpayer and any such agreement intended to establish property tax payments on some other basis is illegal and unenforceable. Also found under VALUATION.

93-367 (5/25/93)
Deeds.
Assessed Owners.
Assessment of Grantees Under Sheriff's Deeds on Properties Sold to Satisfy Court Judgments.
Property sold by a sheriff to satisfy a court judgment may be redeemed by the debtor for a period of one year after the sale, G.L. Ch. 236 §33, so that the grantee under the sheriff's deed would not be the owner for assessment purposes until the redemption period has expired. **Also see 93-849 (11/4/93) (Property assessed to the grantee of a sheriff's deed should be reassessed to the prior owner (and to the grantee of the sheriff's deed) if the tax has not been paid where the assessment date occurred before the completion of the year in which the prior owner may redeem by paying the judgment).**

93-611 (7/21/93)
Assessed Owners.
Establishing Changes of Corporate Names Where Merger Occurs.
A parent corporation into which a subsidiary corporation was merged is the owner for assessment purposes of property held in the name of the subsidiary corporation where the certificate of corporate merger issued by the secretary of state was recorded at the registry of deeds. **Also see 95-1052 (12/22/95) (Where a certificate of corporate merger for two banks has been recorded at the registry of deeds, a parcel held in the name of one of the banks should be assessed to the merged entity).**

93-936 (1/4/94)
Parcels.
Assessment of Private Ways.
Abutters of a private way mentioned as a boundary line in the deed to their property own to the center of the way, unless the deed expressly excludes ownership of the way, G.L. Ch. 183 §58, and are to be assessed for the entire parcel including the land upon which the way is situated. If not owned by the abutters, the way should be separately assessed to its owner.

94-177 (4/8/94)
Pro-rata Pro-forma Taxes.
Sales of Properties Forfeited to Commonwealth for Illegal Drug Activity.
Property for which the district attorney sought and obtained forfeiture because of its use in connection with illegal drug activity belongs to the commonwealth under G.L. Ch. 94C §47 and is exempt from taxation under G.L. Ch. 59 §5(2). If the property is then sold, the new owner will owe a pro rata pro forma tax under G.L. Ch. 59 §2C. Also found under EXEMPTIONS; PUBLIC PROPERTY.

94-669 (8/3/94)
Assessed Owners.
Assessment of Properties Transferred to/ Controlled by Adult Custodians under Uniform Transfers to Minors Act.
Assessment of Properties Controlled by Court Appointed Guardians or Conservators.
Property transferred to an adult custodian under the Massachusetts Uniform Transfers to Minors Act for the benefit of two minors is to be assessed to the minors, who are the legal owners of the property under G.L. Ch. 201A §11(3)(b). In the case of property being managed by a guardian or conservator appointed by the probate court under G.L. Ch. 201 §20, title to the property never vests in the guardian, but is retained by the ward who continues to be the owner for assessment purposes. G.L. Ch. 59 §11. **Also see 92-152 (12/9/92) (Property transferred to an adult custodian under the Massachusetts Uniform Transfers to Minors Act for the benefit of a minor is to be assessed to the minor, who is the legal owner of the property. G.L. Ch. 201A §11(3)(b)).**

94-703 (8/16/94)
Leases.
Assessed Owners.
Assessment of Land Subject to 99 Year Leases.
Condominiums.
Condominium Parking Spaces.
Land being leased by a condominium association for a period of ninety-nine years to individual unit owners for use as parking spaces should be assessed to the association if the developer or grantor of the master deed conveyed the land by separate deed to the association. If not, the land is part of the common area of the condominium and under G.L. Ch. 183A §14, its value is included in the assessment of the individual units, not assessed separately.

94-721 (12/13/94)
Deeds.
Parcels.
Acreage on Deed Inconsistent with Boundary Description.
Where there is a discrepancy in a deed between the land area contained in the metes and bounds description and the land area stated in the deed, the metes and bounds description, or the lines set forth in any recorded plan referenced in the deed, control as to the amount of land being conveyed. Therefore, the assessors should assess the new owner for the entire area within the metes and bounds description.

94-778 (9/22/94)
Deeds.
Assessed Owners.
Assessment Where Property Conveyed Twice to Different Grantees Under Separate Deeds.
Property conveyed by its owner to different individuals under two different deeds, the first executed on January 27, 1994 and recorded on January 28, 1994 and the second executed on November 10, 1993 and recorded on February 1, 1994, should be assessed in the names of all owners until the issue of ownership is resolved by the parties or in a judicial proceeding, since an assessment including a non-owner is still valid so long as one of the actual record owners is included. Generally, if a second conveyance is made before the first deed is recorded, the person who records first will prevail, but under G.L. Ch. 59 §11, the assessors merely assess property relying on record ownership and do not determine who holds title to the property.

94-998 (2/16/95)
Condominiums.
Parcels.
Effect of Mortgage Foreclosures on Condominiums.
Condominiums created on a property after the recording of mortgage on that property are terminated by the foreclosure of the mortgage, unless the mortgage had been subordinated to the master deed, and would be assessed as a single parcel rather than condominium units. Under mortgage law, a mortgagee who obtains possession of property through a foreclosure is not subject to a change in the nature of ownership made after the mortgage was granted unless the mortgagee had expressly consented to the change.

94-1008 (2/13/95)
Parcels.
Assessment of Land On Unrecorded Subdivision Plans.
The assessors may assess commonly owned land divided into lots by a subdivision plan, which had been approved by the planning board, but not endorsed and recorded at the registry of deeds, before the January first assessment date as individual lots or a single parcel. **Also see 91-1081 (1/9/92) (Assessors may assess commonly owned land shown as separate lots on a subdivision plan approved by the planning board which had not been recorded as of the assessment date as individual parcels or a single parcel. The value of the land should reflect its highest and best use as residential lots no matter how it is assessed); 89-816 (11/15/89) (Land under common ownership that is divided into lots by a plan that has been endorsed by the planning board as not requiring approval under the Subdivision Control Law, but has not been recorded as of the assessment date, may be assessed as individual parcels or a single parcel); 89-796 (11/15/89) (Unrecorded subdivision plan approved by the planning board, upheld by the superior court on an appeal by abutters, and then ratified by the planning board with modifications, is an approved subdivision that the assessors could use for the purpose of assessing taxes even though it was not endorsed by the planning board until after January first assessment date, because the property owner was entitled to an endorsement after the court decision, or at the latest, 20 days after the ratification vote, and both dates were prior to January first).**

94-1042 (2/22/95)
Assessed Owners.
Assessment of Property for Which Certificate of Entry for Condition Broken is Recorded.
Property owned and conveyed by a municipality to private individuals subject to the condition that the property be developed within a specified time, which was entered by the municipality for breach of the

condition revested title in the municipality and the recording of a certificate of entry for condition broken at the registry of deeds established the municipality as the owner of record for assessment purposes.

95-230 (3/13/95)
Tax Rates.
Placement of School Tax Rate on Tax Bills.
Local property tax bills may not show a "school tax rate", which was abolished in 1990. However, information about the portion of the local budget devoted to school purposes may be enclosed with the tax bills. Also found under **TAX BILLS**.

95-538 (6/7/95)
Reassessments.
Calculation of Interest on Reassessed Taxes.
Interest on a tax reassessed under G.L. Ch. 59 §77 relates back to the original bill for the tax, not the reassessed tax bill. Also found under **COLLECTION PROCEDURES**.

95-596 (10/10/95)
Condominiums.
Assessment of Sewer Treatment Plants on Common Area and Facility Land.
The value of a sewer treatment plant, located on land that is part of the common areas and facilities of a condominium, along with the value of any rights and easements to discharge into it, should be reflected in the value of the condominium units in accordance with G.L. Ch. 183A §14, even where there is separate ownership of the plant itself.

95-600 (6/29/95)
Inspections.
Inspection of Properties Without Owners' Consent.
Information Requests.
Assessors do not have the statutory authority to inspect property without the consent of the owner for the purpose of making an assessment. However, the assessors may request that the owner (or lessee) provide information on the physical characteristics and condition of the property in a written return in the pre-assessment stage and failure to respond, or to accurately respond, subjects the taxpayer to a penalty of $50, and loss of abatement rights unless there is some demonstrated inability of the property owner to comply. The department of revenue does require property reinspection program as part of triennial certification review in some cases, but that requirement on the assessors does not compel property owners to permit inspections. **Also see 90-706 (11/27/90).**

95-642 (7/20/95)
Omitted/Revised Assessments.
Revisions Based on Settlement of Lawsuits Regarding Development Status.
The assessors may revise the assessments on four parcels under G.L. Ch. 59 §76 to reflect any increased value attributable to their buildable development status where the parcels were originally assessed as undevelopable because the assessors had not researched their status as "grandfathered" lots under the zoning act, G.L. Ch. 40A and their actual development status as buildable was confirmed as part of a settlement to a lawsuit instituted by abutters challenging the building inspector's determination of the number of legally permissible residences the parcels could support. The fact that the settlement was reached after January first does not preclude the assessors from revising the assessment for the current fiscal year, because the applicable zoning law and underlying facts about the land were the same on that date. Therefore, to the extent the settlement was based on the proper application of the zoning code to the parcels in question, the assessors would have reached the same conclusion about the development status of the land on January first if they been able to research the facts and properly apply the law.

95-820 (8/17/95)
Condominiums.
Assessment of Phased Condominium Development Rights.
The value of land subject to a developer's right to build future units in a phased condominium development should be assessed to the developer as separate units under G.L. Ch. 183A §14 after authorization from the commissioner of revenue under G.L. Ch. 59 §11 to assess taxes to the owner of a present interest in property. The lien for such an assessment at least attaches to the developer's interest and a municipality should be able to foreclose against that interest where the development rights have not expired and the lien has not been lost. It is unclear whether the lien could be enforced against the unit owners where the development rights have expired. **Also see 95-1189 (12/26/95) (Where a developer's right to build future units in a phased condominium development have passed to the association of unit owners, the value of the land subject to those rights should be included in the valuation of each owner's unit in proportion to their percentage interests in the common areas, not separately assessed).** Also found under **COLLECTION PROCEDURES**.

95-1029 (11/13/95)
Life Estates.
Assessed Owners.
Tenancies.
Assessment of Properties Subject to Life Estates With/Without Powers to Mortgage or Convey Fee Interests.
A grantor who by deed conveys property to herself "for my lifetime then" to two persons as joint tenants has created a life estate for herself and is the person to whom property taxes are to be assessed under G.L. Ch. 59 11. The named remaindermen will take the property as joint tenants when the life tenant dies. Life estates are also created in the grantors where one deed states the grantor conveyed to herself "for life with full power to mortgage, sell, convey or encumber" and the other deed states the grantor conveyed to three persons "reserving unto

myself ... a life estate with full power to mortgage, sell and convey without accounting to the remainderman." While a life tenant can sell or convey his interest in the property, he cannot ordinarily give a mortgage, nor sell the fee interest. However, such powers may be expressly granted when the life estate is created. Where a grantor granted to herself "a tenancy for life with no power to mortgage, sell or convey", the grantor holds a life estate with the full power to convey her interest. Since a life tenant would not ordinarily have the power to give a mortgage, or sell the fee interest anyway, the language may have been intended to prohibit the life tenant from alienating her interest in the property. Such direct restraints on the ability of the life tenant to alienate his or her interest are void.

95-1155 (12/11/95)
Trusts.
Assessed Owners.
Assessment of Properties Held in Trusts Where Names of Trustees Unknown.
Where a property is conveyed and a trust, not the trustee(s), is named in the deed as grantee, and no declaration of trust identifying the trustee(s) has been recorded at the registry of deeds, the assessors should assess taxes simply to "Trustee, _____" (Name of Trust) without actually naming the trustee, until a document naming the trustee is placed on record. **Also see 95-978 (11/21/95) (Where a parcel of property is subject to a trust and the assessors have record notice that the trustee is deceased, the assessors should assess taxes to "Trustee, _____" (Name of Trust), until both the appointment of a successor trustee, and acceptance of the appointment, are recorded in the registry of deeds or probate).**

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92-140 (2/18/92)
Liens.
Subordination of Liens.
A tax collector may not agree to subordinate a municipality's lien securing the payment of a betterment or special assessment to a mortgagee bank. Also found under **LIENS**.

92-519 (10/13/92)
Abatements.
Issuance of Abatement Certificates by Officers Making Assessments.
Abatement certificates for betterments and special assessments should be issued and signed by the board of officers that assessed the betterments, not the assessors. However, the assessors' office may prepare and process the certificates and related documents and reports for that board.

92-929 (10/19/92)
Interest.
Alternative Rate.
Interest on an unpaid betterment or special assessment may be charged at a rate that is two percentage points above the rate paid by a municipality on the bonds issued for the project, not two percent of that rate, if a municipality adopts that alternative rate under G.L. Ch. 80 §13.

92-1026 (12/29/92)
Assessments.
Adjustment in Assessable Costs for Public Lands.
Assessable Costs.
Interest Expenses As Part of Assessable Costs.
Recording Requirements.
Water Assessments.
No reduction in the cost of installing water system improvements must be attributed to abutting properties owned by federal, state or municipal governments and the entire cost may be assessed against properties subject to special taxation, except to the extent the special benefits received by those properties exceed that cost. Interest expenses incurred by the municipality on debt issued for a water project are part of its cost and may be included in the assessment under G.L. Ch. 40 §42G. The assessment and recording requirements and time frames for a water project are governed by G.L. Ch. 40 §§42G-42I, not G.L. Ch. 80 §§1 and 2, even if the project includes taking an easement by eminent domain. **Also see 89-367 (8/10/89) (Short term interest expenses incurred by a municipality on funds borrowed to construct a water distribution system may be included as a part of the costs to be assessed on benefited properties).**

93-944 (1/5/94)
Recording Requirements.
Late Recording of Betterment/Special Assessment Lien Statements.
Liens.
Enforcement of Liens for Late Recorded Betterments/Special Assessments.
A municipal lien certificate issued between the time a betterment or special assessment is authorized for a public improvement and a statement is recorded at the registry of deeds to establish liens on the properties to be benefited by the improvement may note the potential assessment, but the lack of notice will not preclude the municipality from enforcing its lien against any subsequent purchaser who had knowledge of the installation of the improvement and enjoyed its full benefits from the beginning, or against any subsequent purchaser or a mortgagee without such knowledge, if the betterment or special assessment lien statement was recorded according to the time frame in the relevant recording statute. Thus, a lien statement recorded after the improvement is installed rather than according to the statutory time frame may result in unenforceable liens and uncollectible assessments. A betterment or special assessment that has been recorded and for which a lien has arisen at the time a municipal lien certificate is issued should be listed under "Improvements Voted for Which There Will Probably Be Betterments/Special Assessments" until the assessment is made by the relevant board and committed by the assessors to the collector. At that time, the outstanding amount would be listed under "Unpaid Betterments/Special Assessments Not Yet Added to Tax" until it is added to a particular year's tax. If the assessment is added to a tax after apportionment, each portion and committed interest would be shown on the certificate under the applicable fiscal year, with the outstanding balance of the assessment not yet added to a tax listed under "Unpaid Betterments/Special Assessments Not Yet Added to Tax. Also found under **COLLECTION PROCEDURES; LIENS**.

94-07 (2/15/94)
Assessments.
Water Assessments.
Assessment of Substandard Undevelopable Lots for Water System Improvements.
Parcels that cannot be developed because they are of a substandard size and are not entitled to "grandfather protection" under G.L. Ch. 40A §6 are subject to assessment for the costs of water system improvements to the extent they benefit from having a source of water nearby for fire protection or other purposes. If they receive no benefit from the water project, the land should be treated as public property exempt from as-

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sessment, which means the entire project cost should be assessed against the remaining taxable parcels, except to the extent the cost exceeds the special benefits received by those properties.

94-36 (2/2/94)
Sewer Privilege Charges.
Abatements.
Refunds.
Abatement and Refund of Sewer Privilege Charges Assessed and Collected in Prior Years.
A municipality may not vote to refund sewer privilege charges assessed and collected several years previously without legislative authorization since sewer privilege charges are benefit assessments, which are taxes, and under the Home Rule Amendment, municipalities may only abate taxes in the manner and time frame provided by the legislature.

94-255 (6/1/94)
Sewer Assessments.
Sewer Privilege Charges.
Funding of Expanded Sewer Treatment Plants by New or Expanded Sewer System Users.
A permanent privilege charge is a benefit assessment made under the taxing power, not a fee, and may be assessed by a municipality to recover the cost of improving its sewage treatment facilities under G.L. Ch. 83 §17. Since a treatment plant is a general benefit facility, any permanent privilege assessments, or sewer assessments made under G.L. Ch. 83 §§14, 15 and 15B, would probably have to be made on all current and potential system users, not just those seeking new or expanded sewer service. The method for computing the assessments would have to conform to the methods found in G.L. Ch. 83 §15 and each individual assessment would be limited to the amount of special benefits received by the property from the construction of the improvements. As a benefit assessment, any permanent privilege assessment would not be a personal liability of the property owner, but would be a lien on the land, which means the recording requirements of G.L. Ch. 83 §27 would have to be complied with in order to enforce collection. Alternatively, a "connection" fee may be imposed on property owners seeking new or expanded sewer service to fund the plant improvements if the improvements are needed to accommodate the new or expanded service, but not if the improvements also generally upgraded the plant and extended its useful life in a way that benefited all customers. In addition, a connection fee could probably be imposed only if property owners are not required by state or local health and safety codes to connect to the sewer system. If sewer connections are mandatory, a benefit assessment, not a fee, would probably have to be imposed. Finally, any connection fee must be based on reasonable projections about the cost of the plant improvements, not speculative estimates about the cost at some unspecified number of years in the future. Also found under **FEES AND CHARGES**.

94-363 (4/27/94)
Exemptions.
Public Properties.
Churches, Charitable Organizations and Institutions.
Any property owned by governmental entities and devoted to public purposes is exempt from taxation, including betterments and special assessments. However, churches, charitable organizations and other institutions that qualify for general property tax exemptions are not exempt from betterments or special assessments. **Also see 89-897 (11/30/89) (Property owned by a municipality is exempt from betterment and special assessments whether that land is located within its borders or in another municipality).** Also found under **PUBLIC PROPERTY**.

94-419 (6/8/94)
Sewer Assessments.
Abatements.
Refunds.
Abatement and Refund of Paid Sewer Assessments Retroactively Lowered by By-law.
A by-law establishing a $1,500 sewer assessment for any property that requires the installation of a pressure pump to connect to the sewer system does not permit a town to abate and refund the difference between that amount and the $4,000 previously assessed and paid where the time for seeking abatements on the assessments under G.L. Ch. 80 §§5-10A has long since expired. Assuming the new assessment scheme conforms with constitutional and statutory standards for benefit assessments and may be applied retroactively, any refund would be based on overassessment and the taxpayer's only avenue for obtaining relief is through the abatement process. Any abatements and refunds would have to be authorized by the legislature because benefit assessments are taxes and municipalities have no authority under the Home Rule Amendment to administer taxes in a manner other than that authorized by statute.

94-578 (10/21/94)
Deferrals.
Relationship between Betterment Deferrals and Property Tax Deferrals for Senior Citizens.
There is a close and direct relationship between eligibility for and administration of the senior citizen water and sewer user charge deferral under G.L. Ch. 40 §42J and Ch. 83 §16G and the property tax deferral under G.L. Ch. 59 §5(41A). Only senior citizens receiving a clause 41A deferral may defer water and sewer user charges and the deferred charges are secured by the same lien statement as the deferred taxes. No additional or separate deferral and recovery agreement or lien statement need be executed or recorded. The senior citizen betterment and special assessment deferral, however, is administered separately from the clause 41A deferral. Senior citizens must meet the same criteria as to age, ownership, domicile, residency and gross receipts as a recipient of a clause 41A deferral, but they do not have to be actually receiving one to obtain a betterment and special assessment deferral. A separate deferral and recovery agreement and lien statement must be executed and recorded. Also found under **FEES AND CHARGES**.

94-872 (11/2/94)
Sewer Assessments.
Assessable Costs.
Direct and Indirect Costs of Sewer Project.
Cost of Facilities Built With Excess Capacity.
Interest, Police and Fire Expense as Part of Assessable Costs.
A municipality may recover the following direct expenses incurred in connection with a sewer project through special assessments: the cost of acquiring any land, easements or other property interest needed for the sewer system, as well as of any materials, supplies and labor involved in the planning, design and engineering of the system and the construction of the various mains, connections, pumping stations and treatment facilities that make up the system's plant, whether the acquisition, design or construction work was undertaken pursuant to a contract or by municipal employees. Feasibility studies would be considered part of the design costs. The cost of pumping stations, or other general benefit facilities, with capacity beyond that needed to meet current service demands may be assessed, but a proportional share should be allocated to properties in areas to be sewered in later phases of the system's construction and assessed at that time. Indirect or incidental costs that may be assessed would include any management, administrative, legal or other resources expended by municipal departments from their budgets in order to carry out or support acquisition, design and construction activities, as well as any interest incurred on debt issued by the municipality for the project. The cost of police details required by law at excavation and construction sites may be assessed, but the expenses of a fire station in the area of construction could not be assessed unless the sole reason the station remained operational was because access to the surrounding area was difficult during construction.

94-1104 (1/26/95)
Street Betterments.
Assessments.
Methods for Assessing Costs of Private Way Reconstruction.
Town procedure for accepting a private way open to the public before accepting a petition of abutters to reconstruct the way was permissible under G.L. Ch. 80 §1 or alternatively, with a by-law so providing, under Ch. 40 §6N. Costs of reconstruction could be assessed under any method authorized by either statute and was not limited to the linear foot method of former G.L. Ch. 40 §5(68) which applied to strictly private ways prior to elimination by chapter 687 §12 of the acts of 1989.

95-177 (4/13/95)
Sewer Assessments.
Adoption of Sewer Systems.
Assessments.
Assessable Costs.
Costs of Previously Constructed Sewers Made Part of Sewer Systems.
A town that votes to adopt a system of sewerage for the town, or a particular area of the town, may include in the system costs to be assessed the cost of a "phase one" interceptor sewer needed to transport the "phase two" flow that was constructed before the vote if the interceptor is located within the area covered by the system. Under G.L. Ch. 83 §15, a town may adopt a general system of sewerage incorporating within it any particular sewers already constructed and make the expenses of constructing them part of the system expenses that may be assessed. In that case, the assessment made on properties benefited by the particular sewers are not for a proportional part of those sewers, but rather for their share of the estimated costs of constructing the system of sewers of which they are now a part.

95-189 (3/31/95)
Water Assessments.
Recording Requirements.
Applicability of Deferred Recording Procedure to Water Assessments.
It cannot be stated with certainty that chapter 138 of the acts of 1994 creates an exception to the recording requirements of G.L. Ch. 40 Section 42I, which governs the creation of liens for water assessments, and that following its provisions will result in valid liens for any assessments a water district may make. Under chapter 138, counties, districts, cities and towns may vote to defer recording and creating liens for betterments and special assessments on properties benefited by the construction of certain public improvements until after the bills for the assessments are issued and the assessments are not paid in full. While presumably intended to apply to liens for all such special assessments, the actual language used appears to limit the provision to betterments imposed under chapter 80 and sewer assessments imposed under chapter 83. However, if a water district does proceed under chapter 138, the district collector should be advised immediately upon authorization of any projects for which assessments may eventually be made so that a statement could be included on any municipal lien certificate issued in the meantime. This will alert potential purchasers and mortgagees of the likelihood of future assessment, which is the purpose of the current recording requirements.

95-250 (3/30/95)
Sewer Assessments.
Recording Requirements.
Liens.
Late Recording of Betterment/Special Assessment Lien Statements.
Applicability of Deferred Recording Procedure to Assessments Authorized Before Effective Date of Procedure.
Assessments.
One and Two Year Delays in Assessment of Sewer Costs.
Two and one year delays in recording liens and making assessments for costs of sewer construction projects will not preclude a municipality from proceeding to assess and collect the assessments. The sewer commissioners have a reasonable period of time after project completion to make the assessments and courts have upheld assessments made after a longer period of time than in this case. Lien statements should now be recorded by the sewer commissioners prior to or about same time as they

certify the assessments to the board of assessors. To the extent the sewer commissioners did not comply with the recording requirements, only certain property owners (such as new buyers and mortgagees) without any actual knowledge of the sewer line installations may be able to avoid payment. Also discusses the delayed recording provisions of chapter 138 of the acts of 1994, whether they apply to projects such as the ones at issue that were authorized before the effective date of the statute, and technical problems in the statute that may affect enforceability of liens created under it.

95-893 (11/2/95)
Interest.
Applicable Rate Where Project Funded by Excess Bond Proceeds from Another Project.
A district may not impose interest on unpaid and apportioned water assessments at a rate 2% above the interest rate incurred on a debt issue that generated excess proceeds used to finance the project for which the assessments are to be levied. The alternative interest rate under G.L. Ch. 80 §13 applies only if debt was issued for the specific project in question.

95-977 (10/3/95)
Water Assessments.
Deferrals.
Interest.
Collection of Interest on Deferred Assessments on Undeveloped Land.
Payment of interest, as well as the principal amount of a water assessment, is deferred until the land is built on, or until the expiration of a fixed period, under G.L. Ch. 40 §42I. While the provisions of G.L. Ch. 80 relative to collection and interest are also applicable to water assessments, the more specific provisions of G.L. Ch. 40 §42 would control where G.L. Ch. 80 §13A, which provides that only the principal amount of the assessment is deferred and interest is paid annually, conflicts with those provisions.

95-1085 (12/13/95)
Sewer Assessments.
Assessments.
Adoption of Assessment Method by Legislative Body.
Uniform Unit Method.
Abatements.
Deferrals.
Exemptions.
No Reductions in Assessments for Undeveloped Land, Charitable Organizations and Institutions, Already Connected Properties or Commercial Properties With Low Water Consumption.
The method used to assess the cost of sewer system improvements under G.L. Ch. 83 15 must be adopted by town meeting in a vote authorizing the project, or by by-law. All privately owned properties are subject to assessment unless there is some permanent legal restriction on their use (such as a conservation restriction or dedication as a cemetery), or feature of the land (such as topography) that precludes current or future use of, and benefit from, the sewer system. Therefore, no abatement is warranted simply because a property is currently undeveloped. Payment of the assessment may be deferred, however, by the sewer commissioners under G.L. Ch. 83 19. Nor is there a legal basis for fully abating the assessments on properties owned by non-profit, charitable corporations as they are not exempt from betterments and special assessments. An abatement is also not proper for a property already connected to the system, as it is fully assessable for a share of the costs of any improvements to the system that upgrade and enhance its capacity. Finally, abatement of assessments on commercial properties are not warranted simply because the residential equivalent units on the property under the uniform unit method would be lower based on their current water consumption. In determining the equivalent units, and therefore, the special benefits received by a property, all current and future uses to which the property could be reasonably adapted in the hands of any owner are to be considered. This is because the assessment is not a fee charged for current use of the sewer system, but rather is a tax assessed to reimburse the community for its expenditures on a public improvement that specially benefits certain properties by enhancing their value or use.

Boat Excise

E91-07 (1/28/91)
Exemptions.
Commercial Fishing Boats.
Occasional Use of Boats for Non-commercial Fishing Purposes.
Seasonal Commercial Fishermen.
A fishing boat does not qualify for exemption from the boat excise under G.L. Ch. 60B §3 if it is used occasionally for purposes other than commercial fishing, such as sightseeing, the owner's sole occupation is not commercial fishing, or the total value of the boat, fishing gear and nets exceed $10,000. **Also see E94-612 (10/2/94) and E92-24 (2/28/92) (A person who engages in commercial fishing as a seasonal occupation does not qualify for a boat excise exemption since both the boat and its owner must be engaged solely in commercial fishing).**

E92-47 (6/15/92)
Assessments.
Boats Not Located in Mooring or Docking Spaces.
The boat excise is to be assessed by the municipality in which the boat owner has engaged mooring or dockage space, even if the boat was actually drydocked in a boat yard in another municipality. G.L. Ch. 60B §2(f).

E92-118 (8/28/92)
Abatements.
Billing.
Minimum Excise and Abatement.
The provision of G.L. Ch. 60A that establishes a minimum motor vehicle excise and abatement does not apply to the boat excise because it conflicts with the minimum excise provisions established by G.L. Ch. 60B.

E93-148 (8/30/93)
Exemptions.
Boats Owned by Government Agencies and Leased to Private Parties.
A boat owned on July first by the Massachusetts Maritime Academy, which is part of the state college system under G.L. Ch. 15A §5 and Ch. 73 §10, and leased to a private person who has an option to purchase the boat at the end of the two year lease, is exempt from the boat excise under G.L. Ch. 60B §3. All boats owned by a governmental entity are exempt, and there are no provisions subjecting those boats leased by the entity to a private party for non-public purposes to taxation, as there are for publicly owned real estate leased for non-public purposes.

93-412 (5/24/93)
Revenues.
Establishment of Waterways Improvement and Maintenance Fund.
A city or town must establish a waterways improvement and maintenance fund under G.L. Ch. 40 §5G if it assesses and collects a boat excise under G.L. Ch. 60B and must credit 50% of all boat excise revenue received to the fund. G.L. Ch. 60B §2(i). Also found under **SPECIAL FUNDS**.

E94-542 (8/9/94)
Abatements.
Transfers of Ownership Without Cancellation of Registration.
An abatement of a boat excise due to the sale of a boat does not require proof of cancellation of registration under G.L. Ch. 60B §2(h). Proof of sale is sufficient for an abatement to be granted. Proof of cancellation of registration is only required for abatements granted when the owner moves to another state, and then only in cases where the boat is required to be registered.

94-640 (8/26/94)
Abatements.
Off-season Relocation of Boats Out of Massachusetts.
A boat owner whose vessel has its usual moorage or dockage in Massachusetts during the summer season is liable for the entire year's excise and is not entitled to an abatement for that part of the year when the vessel was located out of Massachusetts.

E94-948 (12/5/94)
Billing.
Collection.
Payment of Interest/Collection Charges on Late Received Bills Mailed to Last Known Addresses.
Obligation of Boat Owners to Provide Changes of Addresses.
An owner of a boat subject to a boat excise under G.L. Ch. 60B who moves and does not notify the assessors, or the division of marine fisheries, of his new address is liable for all interest and charges accrued on a boat excise bill mailed to his old address that does not reach him in time to make timely payment. Owners of registered boats are required by G.L. Ch. 90B §3 to notify the division of a change of address within fifteen days of the move and G.L. Ch. 60B requires owners of boats subject to excise to provide information to the assessors in the city or town where the vessel is principally moored or docked for the assessors' use in assessing the excise.

Borrowing

92-759 (8/17/92)
Lease-Purchases.
Installment Sales and Financing Agreements.
"True" Leases.
A municipality may not enter into a "lease-purchase" agreement to acquire departmental equipment if the transaction is an installment sale, *i.e.*, a purchase combined with a financing arrangement, rather than a genuine lease. Cities and towns may finance the purchase of equipment over several years only by issuing debt in accordance with G.L. Ch. 44. **Also see 92-76 (2/28/92) (Agreement to lease hydraulic catch basin cleaner for three years, with an option to purchase for one dollar at the end of the lease term is an installment sale, not a genuine lease, and can be entered into only through the issuance of debt); 94-276 (4/7/94) and 94-401 (5/25/94) (Discusses the difference between a true lease and an installment sales agreement); 95-211 (3/21/95) (An agreement for school department equipment is a financing agreement, not a lease, where the superintendent has signed an Internal Revenue Service Form 8038-G characterizing the agreement as the issuance of debt, the consideration to the town is the provision of the financing at the beginning of the agreement, the town takes title to the equipment at the outset of the agreement and the town may buy the equipment for one dollar at the end of the "lease" term).** Also found under **PROCUREMENT**.

92-1066 (1/4/93)
Purposes.
Payment of Arbitration Awards.
An arbitration award is not a court judgment and cannot be paid and raised in the tax rate without appropriation under G.L. 59 §23, nor financed by borrowing under G.L. Ch. 44 §7(11). Also found under **FINANCIAL MANAGEMENT**.

95-179 (2/27/95)
Purposes.
Road Reclamation and Repaving.
A municipality may borrow under G.L. Ch. 44 §7(5) for road reclamation projects that include tearing up the existing asphalt surface and rebuilding the road, rather than simply repaving over the existing surface. Reclamation of a road is substantial enough to qualify as "construction" within the meaning of clause 5. Repaving alone can be funded by borrowing under clause 5 only if it is substantial in scope and has a useful life of at least ten years.

95-1031 (11/7/95)
Scope.
Redesigned and Smaller Capacity, Less Expensive Transfer and Recycling Facilities.
A town meeting debt authorization of $750,000 to build a transfer station and recycling center, and a related debt exclusion approved by the town's voters for the project a month later, would still apply to a facility with a smaller processing capacity than originally envisioned at the time the votes were taken and with a lower estimated cost of $350,000. A scaled back project would be within the scope the votes, unless there is evidence that town meeting specifically intended to build the facility only if it met certain design and capacity requirements. Also found under **PROPOSITION 2½**.

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91-215 (3/19/91)
Cities.
Role of Mayor and Council in Reducing Approved City Budgets.
Reductions in an approved budget may be made by the mayor by submitting an amended budget to the city council with lower amounts than approved in whatever line items he chooses. This action cuts the appropriations for those line items the mayor designates and re-opens the whole budget to action by the city council, which may then reduce any line item in the amended budget.

92-145 (3/2/92)
Format.
Towns.
Consolidation of Line Items in Town Budgets.
The format of town budgets is not governed by statute, unlike the format of city budgets which is required by G.L. Ch. 44 §32 to include certain items for each department. Therefore, in the absence of a by-law prescribing a specific budget format, the board responsible for submitting the budget may present it in any format it chooses and town meeting may adopt, consolidate or expand the presented line items as it deems appropriate.

92-765 (8/24/92)
Cities.
Mayor's Budget Recommendations.
Layoff of Officials Covered by Salary Ordinances.
A mayor may lay off the municipal sanitarian whose salary is fixed by ordinance because he is not required under G.L. Ch. 44 §33A to recommend in the budget sufficient appropriations to pay salaries in the next fiscal year of all persons currently employed. Also found under **LOCAL OFFICIALS AND EMPLOYEES**.

93-310 (4/27/93)
Towns.
Role of Finance Committees and Boards of Selectmen in Budget Preparation and Submission to Town Meetings.
A board of selectmen in a town with an elected or appointed finance committee has no statutory role in the preparation and submission of the annual budget, unless it is expressly given a role by by-law. If not, the finance committee is responsible for preparing, submitting and distributing the budget under G.L. Ch. 39 §16 and Ch. 41 §§59 and 60.

94-575 (6/22/94)
Cities.
Mayor's Budget Recommendations.
Effect of City Council Rejection of Mayor's Total Budget.
A city council's rejection of the mayor's budget in toto, rather than item by item, will put the mayor's recommended budget into effect by default upon the expiration of forty-five days from the mayor's submission of the budget to the council, unless the council takes some other action on the budget before then. G.L. Ch. 44 §32.

95-594 (6/19/95)
Format.
Towns.
Expansion of Line Items in Town Budgets.
Town meeting may expand the number of line items in departmental budgets prepared and presented by the finance committee as it deems appropriate, in the absence of a by-law prescribing a budget format. The finance committee acts in an advisory capacity only and it is left to town meeting to vote a particular format.

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Classification and Taxation By Use

87-786 (12/1/87)
Residential Exemptions.
Applicability of Minimum Taxable Valuation Requirement in Municipalities Where Residential Exemptions Not Adopted.
The provisions of G.L. Ch. 59 §5C limiting the extent to which a tax assessed on residential property may be reduced by the application of certain personal exemptions applies in any city or town, whether or not a residential exemption has been adopted. Also found under **EXEMPTIONS**.

90-582 (8/25/90)
Commercial Property.
Residential Property.
Vacant Lots Located in General Zones.
Vacant land located in a general use district that permits residential and commercial use and subdivided into lots being marketed as residential lots, or held for a planned residential condominium development, is class three, commercial, property under G.L. Ch. 59 §2A(b). For the land to qualify as residential property "situated in a residential zone and ... subdivided into residential lots", it must be located in a zone designated exclusively for residential use. Residential classification, and the preferred tax treatment such classification affords, is limited to lots that can only be used for residential purposes.

90-890 (1/7/91)
Commercial Property.
Residential Property.
Apartments and Rooms Rented to Business Travelers for Short-term or Weekly Basis.
Furnished apartment units and rooms, some equipped with refrigerators, stoves, microwave ovens and television sets, rented on a short term or weekly basis to persons who are attending business conferences or are temporarily in town for personal or other business reasons are class three, commercial, property under G.L. Ch. 59 §2A(b). The properties are not being used and held to provide a place for people to live on a non-transient basis, but rather to provide accommodations for those traveling for business or personal reasons. Therefore, they cannot be classified as residential property.

90-1022 (1/22/91)
Commercial Property.
Residential Property.
Businesses Located in Residential Zones. Classification Where Highest and Best Use of Properties for Valuation Purposes Differs from Current Uses.
A property located in an area zoned for residential use that is actually used for a masonry business, and as a warehouse and storage area, is class three, commercial, property under G.L. Ch. 59 §2A(b) even where the assessors determine when valuing the property that the highest and best use of the site is for residential purposes. While in most cases the use of a property under classification will be the same as the use of the property considered by the assessors in arriving at its fair market value, these uses are determined independently according to different legal standards and need not be the same.

93-172 (3/16/93)
Multiple Use Property.
Residential Property.
Commercial Property.
Private Homes Operated as Bed and Breakfast Establishments.
A private home in which a bed and breakfast establishment is operated is a multiple use property under G.L. Ch. 59 §2A(b), with the portion used primarily for guests classified as class three, commercial, property and the portion used as the residence of the owner or operator as class one, residential, property.

94-301 (6/7/94)
Small Commercial Exemptions.
Eligibility of Sole Proprietorships and Home Businesses.
Eligibility of Mixed Use Parcels.
Parcels with Multiple Commercial Occupants.
Disclosure of Eligible Businesses to Selectmen.
Appeals of DET Determination of Eligibility or Assessors' Failure to Apply Exemption to Eligible Parcels.
Businesses eligible for the small commercial exemption under G.L. Ch. 59 §5I must have an average annual employment at all locations of no more than ten during the prior calendar year as determined by the department of employment and training (DET). Sole proprietors and partners are not considered employees by DET and, therefore, sole proprietorships or partnerships must have another person working for the business for a certain period of time during the prior year to be eligible. Eligible businesses operating out of homes will qualify for an exemption on any portion of the home, such as an office, basement, garage or other area, devoted to the operation of the business enterprise and classified as commercial property. For other mixed use properties, the exemption will be granted if the eligible business occupies a specific portion of the property devoted to commercial purposes and the valuation of the commercial portion does not exceed one million dollars. If more than one business occupies the commercial portion of the property, they must all be eligible businesses for the exemption to be granted. Access to the list of eligible businesses provided to the assessors by DET is limited by G.L.

Ch. 151A §64A, and disclosure of the list to the selectmen is prohibited. Businesses do not have any right under G.L. Ch. 59 §5I or Ch. 151 §64A to appeal DET's determination not to include them on the list of eligible businesses. Nor does G.L. Ch. 59 §5I provide a procedure for taxpayers aggrieved by the failure of the assessors to apply the exemption to a parcel occupied a business that does appear on the list. In those cases, the assessors may request authority from the commissioner of revenue to abate under G.L. Ch. 58 §8 in order to put the exemption into effect. **Also see IGR 93-402, "Small Commercial Exemption" (December 1993).** Also found under **EXEMPTIONS**.

94-1101 (1/3/95)
Residential Property.
Commercial Property.
Qualification of Portion of Commercial Health Club Used for After School Recreational Program as Child Care Facility.
A portion of a health club facility that is used in the operation of an after school recreation program, as well as a vacation and summer day camp, for children primarily between the ages of five and twelve, may qualify for classification as residential property under G.L. Ch. 59 §3F if the assessors determine that a licensed "school age child care" program, as defined in G.L. Ch. 28A §9, is operated on the site and establish a particular area of the club used for the purpose. The area may be used for other purposes when the child care program is not being operated, but there must be a significant occupation and use of the area for child care purposes on an ongoing basis to qualify. Occasional use for children's recreational programs is not sufficient.

95-26 (2/1/95)
Residential Property.
Commercial Property.
Group Homes for Elderly or Disabled Persons.
A group home, or other congregate or shared living arrangement for a small group of elderly, or mentally or physically disabled, persons would be classified as residential or commercial property under G.L. Ch. 59 §2A(b) depending on whether the primary use and purpose of the property is to provide the occupants with residential quarters or with services. A group home where the supervision of the occupants is minimal, the occupants have an expectation of privacy in any quarters assigned for their use, and the support and health services provided are simply necessary to accommodate the occupants' disabilities or age and enable them to live, work and participate in community life are primarily used to provide housing and any services provided are incidental to that residential use. However, if substantial mental and medical care and other types of support services are provided and the occupants' daily activities are highly supervised and regulated, then the dominant purpose of the property can no longer be characterized as residential quarters. Rather, the property is being used to provide treatment and care in a non-institutional setting and would be classified as commercial property. **Also see 91-361 (7/5/91) (Discusses criteria for determining nature of facility).**

95-319 (4/20/95)
Residential Property.
Commercial Property.
Assisted Living Complexes.
Nursing Homes in Assisted Living Complexes.
A separately licensed nursing home located in an assisted living complex is not subject to the provisions of G.L. Ch. 19D §18(c) providing that assisted living residences be classified as residential property. Therefore, any property used as a licensed nursing home should be classified as class three, commercial property. However, all other portions of the complex that are subject to the regulatory and certification provisions of G.L. Ch. 19D, such as the residential units and any areas used by the operator to provide residents with personal and supportive services, are to be classified as residential property.

Collection Procedures

89-228 (4/12/89)
Taxes.
Refunds.
Interest on Overpayment Refunds.
Application of Overpayment Refunds to Future Years' Taxes.
A taxpayer who has made preliminary, voluntary and/or actual payments exceeding the total tax assessed for the year has overpaid the tax and is entitled to a refund of the amount overpaid, but no interest. A refund with interest must be made only where an abatement of the tax assessed for the year results in that entire tax, as abated, being overpaid. G.L. Ch. 59 §69. Any overpayment refund belongs to the taxpayer and should not be applied to the next year's tax liability unless the taxpayer directs the collector to do so.

89-269 (7/14/89)
Fees/Charges.
Billing and Collection of Water Charges Based on Estimated Service Use.
A municipality may bill water and sewer charges based on estimated rather than actual use every other billing period and, if those charges are not paid when due, may collect them in the same manner as those charges based on actual use. This includes imposing any interest and collection costs provided under current collection by-laws and policies, and adding the overdue charges, interest and costs to the tax on the property under G.L. Ch. 40 §42A-42F if accepted. Also found under **FEES AND CHARGES; LIENS**.

90-886 (12/11/90)
Fees/Charges.
Payments.
Interest/Collection Costs.
Liens.
Lawsuits.
Set-offs.
License/Permit Denials, Revocations or Suspensions.
Service Shut-offs.
Billing, Payment and Collection of Water and Sewer Charges.
The initial billing, payment and collection of water and sewer charges is governed by local policies, which may include acceptance of partial payments and the imposition of interest and late charges. These policies should be set forth in a by-law, and in the case of the interest rate, must be fixed by by-law at an amount that cannot exceed the rate applicable to delinquent property taxes. G.L. Ch. 40 §21E. If the municipality has accepted the provisions of G.L. Ch. 40 §§42A-42F and Ch. 83 §§16A-16F, and has recorded its acceptance at the registry of deeds, a lien will arise on the property supplied water and sewer service automatically by operation of law the day after any charge becomes overdue. Any unpaid charge, and interest and collection costs, for which a valid lien exists may then be added to the real estate tax on the property and if it remains unpaid, the property may be taken into tax title. If the unpaid charge is added to the tax of the next fiscal year after the lien arises, the lien is coterminous with the tax lien on the property. Otherwise, it terminates on October first of the third year after the charges becomes overdue. Other collection remedies available include a lawsuit against the person assessed the charge under G.L. Ch. 60 §35, set-off against monies owned to the person assessed under G.L. Ch. 60 §93, and denial, revocation or suspension of licenses and permits under G.L. Ch. 40 §57 if accepted. The town may also shut off water or sewer service to the property. G.L. Ch. 40 §42B; Ch. 83 §16B. **Also see 95-576 (6/23/95).** Also found under **FEES AND CHARGES; LIENS.**

92-17 (1/13/92)
Set-offs.
Set-off of Abatement Refunds Against Current Year's Taxes Not Yet Due.
Under the set-off provisions of G.L. Ch. 60 §93, the treasurer may apply a taxpayer's abatement refund to his outstanding current year's taxes on that or other parcels, even before the date those taxes could ordinarily be paid without incurring interest.

92-288 (4/16/92)
Tax Takings.
Takings for Multiple Year Delinquencies.
If more than one fiscal years' taxes are outstanding when a collector makes a tax taking, the taking may be made for the taxes, interest and charges due for the earliest fiscal year and those due for later years would then be added to the tax title account. Alternatively, the taking may be made for the taxes, interest and charges due for all of the fiscal years. If a multiple year taking is made, the instrument of

taking should include taxes, interest and charges to the date of taking, separated by fiscal year.

92-556 (8/17/92)
Set-offs.
Set-off of Abatement Refunds and Interest Against Other Taxes Owed by Same Taxpayer.
A taxpayer who receives an abatement refund for a particular year's tax, but owes taxes on other properties or for other years on the same property, is entitled to interest on the refund under G.L. Ch. 59 §69. However, the refund and interest may be set-off against the delinquent taxes, interest and charges under G.L. Ch. 60 §93. Those amounts are considered paid the same day as the refund is issued so that interest on the refund and the delinquent taxes should be determined as of the set-off date. Also found under **ABATEMENTS AND APPEALS**.

92-763 (10/29/92)
Fees/Charges.
Liens.
Collection of Delinquent Light Charges on Properties Located in Neighboring Municipalities.
Delinquent charges for utility service provided by a municipal utility department constitute liens on all parcels served including those located in a neighboring municipality if the utility has accepted G.L. Ch. 164 §§58B-58F and made the required filings. The assessors of the neighboring municipality must add any delinquent charges constituting liens certified to them to the tax on the property, and once collected, the charges are to be turned over to the utility department. Also found under **FEES AND CHARGES; LIENS; LIGHT PLANTS**.

92-800 (9/1/92)
Set-offs.
Set-off of Abatement Refunds of Current Owners to Delinquent Taxes Owed by Prior Owners.
The treasurer may not apply, under the set-off provisions of G.L. Ch. 60 §93, an abatement refund due the current owner of a parcel to a prior year's taxes owed by the previous owner. The amount to be applied must be owed to the same person owing the taxes or charges.

92-822 (10/6/92)
Liens.
Tax Takings.
Effect of State Tax Sales on Local Tax Liens.
Property sold by the commonwealth for delinquent state taxes is subject to existing municipal tax liens, which remain enforceable by the local collector and treasurer.

92-853 (10/26/92)
Tax Titles.
Payments.
Acceptance of Partial Payments Less Than 25% on Tax Title Accounts.
A treasurer may, but is not required to, accept partial payments on a tax title account of less than twenty-five percent of the redemption amount. However, acceptance of the smaller payment does not permit the treasurer to make a legally binding agreement to delay commencing foreclosure proceedings. G.L. Ch. 60 §62.

92-884 (10/22/92)
Taxes.
Tax Takings.
Tax Titles.
Lawsuits.
Responsibility of Assessed Owners for Taxes on Properties Acquired by Governmental Entities After July 1.
Foreclosure of Tax Liens on Publicly Owned Properties.
The owner of property on January first remains personally liable for taxes assessed on that property for the entire fiscal year, even though it was acquired by an improvement district later that year. The property would qualify for an exemption only if the district had acquired it before July first. A tax taking and foreclosure to enforce collection is not expressly prohibited, but the land court might not permit foreclosure on property of a political subdivision on public policy or other equitable grounds. The tax may also be collected by suit against the assessed owner or use of the set-off procedure. Also found under **EXEMPTIONS; PUBLIC PROPERTY**.

92-904 (10/8/92)
Set-offs.
Set-off of Performance Deposits Against Delinquent Taxes.
A treasurer may set-off a performance deposit given to the municipality by a developer under G.L. Ch. 41 §81U against delinquent taxes if the delinquent taxpayer is identical to the person or corporation entitled to the refund of the performance bond.

92-965 (10/30/92)
Fees/Charges.
Liens.
Collection of Charges for Installation and Testing of Water Backflow Devices.
Unpaid charges for the installation and testing of backflow protection devices in properties to ensure water safety and purity are part of the water service supplied to the property, constitute liens if the municipality has accepted G.L. Ch. 40 §§42A-42F and recorded its acceptance, and may be collected as part of the tax on the property. Also found under **FEES AND CHARGES; LIENS**.

92-1070 (1/14/93)
Lien Certificates.
Liens.
Validity of Liens for Revised Assessments Made After Municipal Lien Certificates Issued.
A lien for a revised (or omitted) tax assessment is not discharged simply because a recorded municipal

lien certificate issued before the assessment does not contain a statement that the taxes are unascertainable. **Also see 91-429 (7/2/91).** Also found under **ASSESSMENT ADMINISTRATION; LIENS.**

93-96 (1/9/93)
Payments.
Taxpayer Directions To Apply Payments to Particular Installments.
A taxpayer making a payment to a local collector may direct him or her to apply that payment to any particular year's tax obligation that may be outstanding, but not to a particular overdue installment of that tax. **Also see IGR No. 91-210 "Taxpayer's Option to Pay Tax Before Paying Interest and Charges" (August 1991).** Also found under **TAX BILLS.**

93-169 (4/26/93)
License/Permit Denials, Revocations or Suspensions.
Revocation of Planning Board Approval Not Required Certifications.
A certification that planning board approval is not required to record a plan under the Subdivision Control Law cannot be revoked by a city or town that has accepted G.L. Ch. 40 §57 if the person submitting the plan is delinquent in paying taxes and other municipal charges. Acceptance of G.L. Ch. 40 §57, and adoption of a by-law or ordinance in accordance with its provisions, permits municipal licensing authorities to deny, revoke or suspend the licenses or permits of persons and businesses that have outstanding taxes or charges. However, the certification is a finding that no permit is needed, not the granting of a permit, and it cannot be rescinded even if it was made in error.

93-218 (5/21/93)
Bankruptcy.
Accrual of Interest/Collection Costs on Pre-petition Taxes After Filing.
If taxes assessed prior to the filing of a petition for bankruptcy under chapter 11 are secured by a lien, interest accruing on those taxes after the filing is also secured by the lien. If the taxes are unsecured, the terms of reorganization approved by the bankruptcy court establish whether there is liability for interest accruing after the filing.

93-298 (4/14/93)
Fees/Charges.
Liens.
Lawsuits.
Set-offs.
License/Permit Denials, Revocations and Suspensions.
Collection of Demolition Charges After Liens Expire.
A demolition charge imposed under G.L. Ch. 139A and Ch. 143 §9 to recover the cost of removing an abandoned and burned structure cannot be added to and collected as part of the real estate tax on the property after the lien has expired. A city or town collector may collect the charge by bringing a lawsuit against the person assessed the charge within six years of the due date or by having the treasurer withhold or set-off the charge against monies owed by the municipality to that person. G.L. Ch. 60 §§35 and 93. A city or town may also collect the charge by denying, revoking or suspending local licenses and permits of that person if it has accepted G.L. Ch. 40 §57 and adopted a by-law in accordance with its provisions. **Also see IGR No. 92-208 "Demolition Charges and Liens" (November 1992).** Also found under **FEES AND CHARGES; LIENS.**

93-332 (4/27/93)
Taxes.
Distraint.
Lawsuits.
Set-offs.
License/Permit Denials, Revocations or Suspensions.
Uncollectibles.
Collection of Delinquent Taxes on Personal Property of Closed or Sold Businesses.
The outstanding personal property taxes of a business that closes or is sold during the fiscal year must be recovered from the assessed owner, rather than the assessed property, unless a lien has been established by distraint of the property under G.L. Ch. 60 §29 or by filing a contract action under G.L. Ch. 60 §35 and seeking attachment of the property before the sale. Remedies for recovery against the assessed owner include filing a contract action under G.L. Ch. 60 §35, set-off under G.L. Ch. 60 §93 and denial, revocation or suspension of licenses and permits under G.L. Ch. 40 §57 if accepted. Personal property taxes that are uncollectible due to death, absence, poverty, insolvency, bankruptcy or other inability to pay of the assessed owner may be abated by the assessors under G.L. Ch. 59 §71 upon request of the collector. If they are uncollectible for other reasons, the assessors may seek authority to abate them from the commissioner of revenue under G.L. Ch. 58 §8.

93-397 (5/10/93)
Taxes.
Refunds.
Interest/Collection Costs.
Refunds of and Accrual of Interest on Preliminary Taxes Where Less Than Actual Taxes.
If a preliminary tax is greater than the actual tax assessed for the year and a taxpayer had paid the preliminary tax in full, he is entitled to a refund of the amount overpaid without interest. If the taxpayer has not paid the preliminary tax in full, interest will accrue on the unpaid balance of the preliminary tax until the date the actual tax was committed and thereafter, only on the unpaid balance of the actual tax. Also found under **TAX BILLS.**

93-421 (5/17/93)
Fees/Charges.
Liens.
Establishing Liens for Unpaid Solid Waste Disposal (Trash/Landfill) Fees.
An automatic lien arises for delinquent trash or solid waste disposal fees and charges imposed under G.L. Ch. 44 §28C(f) and such fees may be collected by adding them to the property tax bill if a city or town votes to accept that statute and records the acceptance at the registry of deeds. Alternatively, a city or town may establish a lien for trash fees by voting to impose a municipal charges lien for the fee under G.L. Ch. 40 §58. **Also see 93-147 (3/4/93); 91-830 (10/22/91); 95-576 (6/23/95) (To ensure the validity of liens for unpaid landfill charges imposed under G.L. Ch. 44 §28C(f), any town vote to impose the lien for such charges should specifically reference Ch. 44 §28C(f) and be recorded at the registry. The vote can be an acceptance of the statute or some other town meeting action stating that the outstanding charges will constitute liens under G.L. Ch. 44 §28C(f). If the vote does not specifically refer to the statute it could be construed as imposing the lien under G.L. Ch. 40 §58, which can be done, but the lien will not arise automatically when the charge becomes overdue).** Also found under **FEES AND CHARGES; LIENS**.

93-547 (7/14/93)
Demands.
Issuance of Multiple Demands for Same Year's Tax.
A tax collector is not legally prohibited by G.L. Ch. 60 §16 from issuing multiple demand notices to taxpayers whenever any installment payment (preliminary, actual, quarterly) of a year's tax is delinquent, but demands mailed before the actual tax commitment for the year are not contemplated by the statute and may not be sufficient to exercise any collection remedy requiring the mailing of a demand. A single demand mailed after the last installment payment for the year is due is recommended instead. If multiple demands are issued, only one demand charge may be imposed on any particular parcel in a fiscal year.

93-735 (1/26/94)
Tax Titles.
Assignment of Tax Titles.
Surplus proceeds from the assignment of a tax title account are general revenue of the municipality. The assignee does not acquire any right to possession of, or receive any rent or income from, the tax title property. The assignee is entitled only to collect 6.5% interest, not the 16% owed to a municipality, under G.L. Ch. 60 §62. Subsequent years' taxes for the property must still be assessed and billed to the owner of record, not the assignee. An assignee selling property after acquiring title through a land court foreclosure does not have to pay any surplus proceeds to persons who could have redeemed the property before foreclosure. **Also see 91-480 (5/24/91) (Any proceeds received from an assignment of a tax title in excess of the amount of taxes, interest and charges is ordinary municipal revenue).** Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

93-896 (12/6/93)
Tax Titles.
Treasurer's Expenses for Tax Title Foreclosures.
A treasurer may spend funds raised without appropriation under G.L. Ch. 60 §50B only for the direct and necessary court fees and costs associated with the tax title foreclosure process in land court, such as filing fees, examiner's costs, certified mailings, publication costs, etc. Any supporting and associated expenditures, such as contracts with firms or banks to assist tax title collections, computer software or additional office staff must be provided for in the regular budget and appropriation process. Also found under **FINANCIAL MANAGEMENT**.

93-944 (1/5/94)
Betterments/Special Assessments.
Lien Certificates.
Liens.
Listing of Betterments/Special Assessments on Lien Certificates Before/After Recording of Betterment/Special Assessment Lien Statements.
Enforcement of Liens for Betterments/Special Assessments Not Appearing on Lien Certificates.
A municipal lien certificate issued between the time a betterment or special assessment is authorized for a public improvement and a statement is recorded at the registry of deeds to establish liens on the properties to be benefited by the improvement may note the potential assessment, but the lack of notice will not preclude the municipality from enforcing its lien against any subsequent purchaser who had knowledge of the installation of the improvement and enjoyed its full benefits from the beginning, or against any subsequent purchaser or a mortgagee without such knowledge, if the betterment or special assessment lien statement was recorded according to the time frame in the relevant recording statute. Thus, a lien statement recorded after the improvement is installed rather than according to the statutory time frame may result in unenforceable liens and uncollectible assessments. A betterment or special assessment that has been recorded and for which a lien has arisen at the time a municipal lien certificate is issued should be listed under "Improvements Voted for Which There Will Probably Be Betterments/Special Assessments" until the assessment is made by the relevant board and committed by the assessors to the collector. At that time, the outstanding amount would be listed under "Unpaid Betterments/Special Assessments Not Yet Added to Tax" until it is added to a particular year's tax. If the assessment is added to a tax after apportionment, each portion and committed interest would be shown on the certificate under the applicable fiscal year, with the outstanding balance of the assessment not yet

added to a tax listed under "Unpaid Betterments/ Special Assessments Not Yet Added to Tax. Also found under **BETTERMENTS AND SPECIAL ASSESSMENTS; LIENS**.

93-975 (11/29/93)
Payments.
Refunds.
Inadvertent Duplicate Tax Payments.
A collector may, but is not required to, refund a second payment inadvertently made on a property tax installment, such as where the property owner and mortgagee bank both make a payment, if it would be equitable to do so, no municipal lien certificate showing the second payment has been issued and it is clear to whom the refund should be directed. **Also see 93-76 (1/29/93).** Also found under **TAX BILLS**.

94-51 (1/31/94)
Tax Deferrals.
Interest/Collection Costs.
Accrual of Interest on Deferrals Where Properties Conveyed with Reserved with Life Estates.
Taxes deferred on a property under G.L. Ch. 59 §5(41A) are due and payable where the taxpayer conveyed a vested remainder to his niece and retained a life estate. Interest would be owed on the deferred amount at 8% per year until the conveyance date and at 16% per year thereafter. Also found under **EXEMPTIONS**.

94-196 (4/1/94)
Payments.
Liens.
Application of Payments and Enforcement of Liens for Water and Sewer Bills Charged to Condominium Associations.
Water and sewer charges for a condominium development may be billed to the association of unit owners and any payment received from the association prior to the due date should be applied against the bill as a whole. G.L. Ch. 183A §14. If the bill is not paid in full by the due date, liens to secure the unpaid amount attach to the individual condominium units in proportion to the percentages of the undivided interests of the respective units in the common areas and facilities set forth in the master deed. Thereafter, any payments made by the association should be applied to reduce all the unit liens on a pro rated basis unless the payment is accompanied by instructions to apply it to reduce particular units' liens. Any payment by or on behalf of a particular unit owner should be applied against the lien on that owner's unit. Also found under **LIENS**.

94-425 (5/17/94)
Tax Deferrals.
Tax Titles.
Deferral of Taxes on Tax Title Properties.
A person who meets the qualifications for a property tax deferral under G.L. Ch. 59 §5(41A) may defer taxes even if his or her property is currently held in tax title. The deferred taxes should be certified into the existing tax title account, but interest on the deferred taxes will accrue at 8%, rather than 16%, until the property is sold or the deferring taxpayer dies. After the sale of the property or death of the taxpayer, the interest rate increases to 16%. In addition, a petition to foreclose the tax title cannot be filed by the treasurer for at least six months after the property is sold or the taxpayer dies. Also found under **EXEMPTIONS**.

94-434 (5/26/94)
Taxes.
Interest/Collection Costs.
Accrual of Interest on Tax Payments Mailed On or Before Due Date.
A property tax payment mailed on or before the payment due date, but received by the collector after that date, is late and subject to interest charges, because there is no statute permitting taxpayers to mail payments on or before the due date in order to avoid interest as is the case with federal and state income tax statutes. Also found under **TAX BILLS**.

94-479 (5/27/94)
Refunds.
Abatement Refunds to Assessed Owners of Sold Properties.
Credit of Abated Amount to Outstanding Tax Balance.
The collector has no authority to issue a refund to an assessed owner of a property, who receives an abatement and sells the property before the second tax bill is issued, if there is an outstanding balance of the year's tax bill. G.L. Ch. 59 §69. The collector's application of the abatement to the unpaid balance, issuance of a second half bill reflecting the balance due after the abatement, and mailing of the second half bill care of the new owners, is proper. Also found under **ABATEMENTS AND APPEALS; TAX BILLS**.

94-544 (6/29/94)
Payments.
Interest/Collection Costs.
Acceptance of and Penalty on Payments Tendered Without Copies of Tax Bills.
A collector must accept any tax payment tendered that is accompanied by sufficient information identifying the particular bill or bills against which the payment is to be applied and cannot impose a penalty for not presenting a copy of the bill with a tax payment. The only collection charges and fees a collector may add to a tax bill are those found in G.L. Ch. 60 §15, which does not include such a penalty. Also found under **TAX BILLS**.

94-695 (9/2/94)
Set-offs.
Wages of Municipal Employees.
Wages of a municipal employee may be set-off against delinquent taxes owed by the employee to the municipality under G.L. Ch. 60 §93. However, it is recommended the employee be paid those minimum amounts allowed to be retained under federal and state garnishment and trustee process laws. **Also see 87-462 (5/25/87).**

94-821 (10/4/94)
Payments.
Refusal to Accept Cash for Municipal Taxes and Charges.
A municipality may not refuse cash as payment for tax or other municipal obligations. Under federal law, United States currency is legal tender for all debts, public charges, taxes and dues.

94-889 (10/18/94)
Bankruptcy.
Taxes.
Abatement of Redetermined Taxes.
The assessors may abate the amount of tax, interest or charges required by a judgment of the bankruptcy court in the course of an adversarial proceeding. Under 11 U.S.C. 505, the bankruptcy court may, with certain exceptions, determine the amount or legality of any tax whether or not paid. Also found under **ABATEMENTS AND APPEALS**.

94-925 (12/2/94)
Bankruptcy.
Fees/Charges.
Abatement of Redetermined Water/Sewer Charges.
Assessors may abate as necessary to put into effect bankruptcy court order establishing a taxpayer's water and sewer obligations, as well as property tax liability, and setting out a schedule of installments and interest rates at which the payments are to be made. Also found under **FEES AND CHARGES**.

94-983 (1/17/95)
Payments.
Settlements.
Collector's Acceptance of Partial Payments of 10% or More as Settlement of Tax Claims.
A collector does not have authority to settle a tax liability claim for less than the total taxes, interest and charges due, where the interest and charges exceed five dollars. Any payment tendered of less than that amount, but of at least ten percent of the amount due, must be accepted by the collector under G.L. Ch. 60 §22. Thus, any such check tendered may be deposited as a partial payment of the tax and does not constitute a release of the claim for the remainder of the tax.

94-990 (12/12/94)
Interest/Collection Costs.
Accrual of Interest on Bills Mailed to Wrong Addresses.
A property tax bill addressed to the location of the property, rather than the taxpayer's residence, which was in another state and had been given to the collector with a written request to direct all bills to that address, was not properly issued under G.L. Ch. 60 §3 and therefore, no interest accrues on the tax. A proper bill with the correct address must be issued for interest charges to accrue. Also found under **TAX BILLS**.

94-1094 (3/27/95)
Tax Titles.
Payments.
Partial Payments of Tax Title Accounts.
Taxpayer Directions to Apply Partial Payments to Taxes Only.
Partial payments on a tax title account must be applied in accordance with the directions of the taxpayer to the underlying tax. While G.L. Ch. 60 §62 includes interest and charges in the calculation of the minimum installment payment required to delay tax title foreclosure, it does not give the treasurer authority to apply payments other than in accordance with the request of taxpayer. Also found under **TAX BILLS**.

95-54 (1/30/95)
Set-offs.
Property Tax Offsets for Senior Citizens/Other Residents Who Perform Municipal Work.
A municipality may appropriate funds to hire senior citizens or certain other taxpayers to work for the municipality in order to defray part of their property taxes, provided the appropriation is to accomplish work that is of value to the town, not just to help needy residents pay their taxes. If the taxpayers are employees, they will have to be subject to withholding, insurance and other laws relating to public employees unless some exemption applies due to the total amount paid or hours worked. If they are independent contractors, then any relevant rules applicable to such contracts will apply. Participating taxpayers may as part of their employment or contractual relationship agree to have the net pay due them set-off against their outstanding taxes or other municipal bills. G.L. Ch. 60 §93. Also found under **APPROPRIATIONS**.

95-92 (4/7/95)
Payments.
Escrow Agent's Directions to Apply Partial Payments to Taxes Not Betterments and Other Added Charges.
An escrow agent making local property tax payments on behalf of a property owner may direct that the payment be applied to the underlying tax, not to any betterments or charges added to the tax, and the collector must apply the payments as directed. Escrow agents may make such a request because regulations issued under the federal Real Estate Settlement Procedures Act of 1974 (RESPA) require them to make disbursements on federally related mortgage loans from escrow accounts as the items for which the property owner is required to make deposits into the account become due even though the account does not contain sufficient funds so long as the mortgagor is current in payments, and most agents are thus obligated to make property tax and insurance premium payments, but not other charges such as utility charges and betterments. **Also see 95-590 (6/13/95).** Also found under **TAX BILLS**.

95-94 (2/9/95)
Bankruptcy.
Excises.
Bankruptcy Discharge of Motor Vehicle Excises.
Motor vehicle excises assessed for the three years preceding the filing of the bankruptcy petition should be priority claims that are not within the scope of the general discharge in bankruptcy. **Also see E91-85 (6/4/91) (Motor vehicle excises should be "excises on transactions" and treated as priority claims if they were assessed during the three years before the filing of the bankruptcy petition, although it is possible excises could be treated as property taxes entitled to priority only for the year**

preceding the filing of the petition. Interest accrued on priority claim excises before the petition was filed would also be treated as priority claims, but interest accrued after the filing would generally be allowed only if the debtor's assets were sufficient to cover his other obligations. Priority claims are not discharged whether or not a claim was filed or allowed in the bankruptcy proceeding. However, any excise not accorded priority status would be discharged and uncollectible). Also found under **MOTOR VEHICLE EXCISES**.

95-139 (2/17/95)
Taxes.
Calculation of First Half Payment Due Dates under Semi-annual Payment Systems.
Interest/Collection Costs.
Accrual of Interest on Payments Received After Due Date Shown on Tax Bill But Before Actual Due Date.
Under G.L. Ch. 59 §57, the first half payment of property tax bills mailed after October first is due thirty days after the mailing of the bills, and when counting the days, the date the bills were mailed should be excluded. A tax payment received by the collector on that date was timely and no interest could be charged, even though tax bill had stated an earlier incorrect date as the due date. Also found under **TAX BILLS**.

95-156 (5/15/95)
Collection Agencies.
Use of Collection Agencies to Collect Ambulance Fees.
A town collector may not engage the services of a collection agency to collect outstanding ambulance service fees and permit the agency to retain a portion of the collections, without an appropriation, as compensation for its services. The collector's authority to enter into such arrangements under G.L. Ch. 60 §2B is limited to outstanding local taxes, except real estate taxes. Also found under **FEES AND CHARGES**.

95-157 (5/9/95)
Payments.
Application of Insurance Proceeds Tendered by Insurance Carriers to Outstanding Taxes.
A collector should accept payments made by a property damage insurance carrier under G.L. Ch. 175 §97A, which requires the insurance company to request a municipal lien certificate and pay taxes owed before making payment to the insured if the damage loss proceeds are $5,000 or more and the property involved is not an owner occupied one, two, three or four family house. The collector's responsibility is to protect the interests of the town, not the taxpayer's ability to repair the property.

95-164 (5/18/95)
Tax Titles.
Liens.
Effect of Tax Foreclosures on Federal Tax Liens on Land Taken Before Liens Filed.
A federal tax lien on land that was taken into tax title prior to the filing of the federal lien is not extinguished by a land court foreclosure decree if certain procedural requirements involving notice to the United States Attorney for the district where the action is brought are not satisfied. 28 U.S.C. §2410. Also found under **LIENS**.

95-176 (3/31/95)
Tax Takings.
Error in Tax Taking Advertisements.
Payments.
Acceptance of Payments Before/After Tax Taking Advertisements.
Tax Titles.
Calculation of Interest on Tax Title Accounts Where Statutory Rate Changes.
A collector must accept partial payments of a delinquent real estate tax up to the time of preparation of the advertisement for taking, but not after a tax taking list has been prepared and submitted to a newspaper for publication under G.L. Ch. 60 §22. The amount due shown in the advertisement must agree with the amount in instrument of taking. Interest accrues in a tax title account on the original amount, including interest and fees, for which land was taken, as well as any subsequently certified amounts, at the rate in effect at the time of taking. Subsequent changes in the rate do not apply to the account.

95-192 (3/14/95)
Payments.
Collector's Refusal to Accept Payments from Co-owner at Request of Other Co-owner.
A collector may not refuse to accept payment of a property tax from one of the two assessed owners of a property where the other co-owner requested in writing that the collector accept payments only from her. As co-owners, both are jointly and severally liable for the taxes. Also found under **TAX BILLS.**

95-356 (6/7/95)
Refunds.
Allocation of Exemptions and Refunds Between Buyers and Sellers for Properties Sold After July 1.
A person who qualifies for a personal exemption and who sells the property after the July first qualification date is entitled to the exemption. However, it is the parties to the sale, not town officials, who are obligated to allocate that benefit in such a way as to ensure it goes to the entitled individual. Where a refund is owed as a result of granting the exemption, the collector may issue it in the joint names of two parties, although it may be issued only in the name of the applicant for the exemption. Also found under **EXEMPTIONS**.

95-399 (8/11/95)
Taxes.
Collection of Taxes from Foreign Governments.
Liens.
Enforcement of Liens on Properties Owned by Foreign Governments.
Property purchased by a foreign government for use as consular premises or the residence of the head of the consular post is exempt from local property taxes from the date the property is acquired under the Vienna Convention on Consular Relations to which the United States is a signatory. While the lien for any outstanding taxes assessed for the period prior to the acquisition is still valid, it cannot be enforced against the foreign government owning the property. Also found under **EXEMPTIONS; PUBLIC PROPERTY**.

95-419 (4/27/95) (6/7/95)
Payments.
Refunds.
Interest on Refunds of Duplicate Payments.
A taxpayer is not entitled to interest on a refund of an overpayment (occasioned by a duplicate tax payment) that was voluntarily made by the town a few years later after an audit. There is no statute that explicitly requires the payment of interest in the case of an overpayment unless the refund resulted from an abatement, judicial proceeding or appellate tax board decision. Also found under **TAX BILLS**.

95-429 (5/3/95)
Fees/Charges.
Interest/Collection Costs.
Demands.
Imposition of Demand Charges and Interest on Unpaid Water/Sewer Charges Before Addition to Taxes.
Prior to the addition of delinquent water/sewer charges to a tax bill, the collection of such charges is governed by local rules, regulations, by-laws, ordinances or votes. The water and sewer commissioners may establish a late payment policy that would include charging ratepayers issued a notice of outstanding charges a reasonable fee (a "late" or "demand" charge) to cover the associated costs. They may do so without town meeting action, but to the extent town meeting does establish a policy they must follow it. However, any interest on unpaid water or sewer charges prior to addition to a tax must be fixed by by-law. Also found under **FEES AND CHARGES**.

95-495 (5/24/95)
Fees/Charges.
Liens.
Collection of Outstanding Condominium Association Water/Sewer Charges Erroneously Added to Taxes on Developer's Unit.
Delinquent water and sewer charges assessed to a condominium association, but erroneously added to the fiscal year 1994 real estate tax of the only unit still owned by the developer, should be allocated by the assessors to the other units in proportion to their share of the undivided interest in the common areas and facilities, and then reassessed as part of the FY94 tax. If a lien cannot be added to the tax on a particular unit because a clean municipal lien certificate was recorded on that unit in the meantime, the association would still be personally liable for those charges and depending on the age of the charges, the collector may be able to bring a lawsuit to collect. If any amounts are uncollectible because of the inability to enforce a lien or bring a lawsuit, a request for authority to abate under G.L. Ch. 58 §8 may be submitted to the commissioner of revenue. Also found under **FEES AND CHARGES; LIENS**.

95-538 (6/7/95)
Interest/Collection Costs.
Calculation of Interest on Reassessed Taxes.
Interest on a tax reassessed under G.L. Ch. 59 §77 relates back to the original bill for the tax, not the reassessed tax bill. Also found under **ASSESSMENT ADMINISTRATION**.

95-576 (6/23/95)
License/Permit Denials, Revocations or Suspensions.
Criteria in Implementation By-laws.
A by-law implementing G.L. Ch. 40 §57 may establish reasonable criteria for using the licensing denial, revocation or non-renewal procedure, such as, for example, using the procedure only where the delinquencies exceed a specific dollar amount.

95-596 (10/10/95)
License/Permit Denials, Revocations or Suspensions.
Amendment of Implementation By-law to Apply to Activities Conducted on Real Estate Owned by Delinquent Taxpayers.
Any action taken by a municipality under G.L. Ch. 40 §57 must be in accordance with an implementation by-law or ordinance, and if that by-law or ordinance has not been amended to give local licensing officials the expanded power authorized by chapter 408 of the acts of 1993 to deny, suspend or revoke licenses or permits "with respect to any activity ... which is the subject of such license or permit and which activity ... is carried out ... on or about real estate owned by any party whose name appears on" the annual delinquent list, licensing officials may only revoke a corporation's permit to discharge sewerage into a sewer treatment plant located on a condominium development if it owed taxes (or other municipal charges). In this case, the corporation's permit may not be revoked because the outstanding real estate taxes in question were assessed on condominiums of which the plant is part of the common areas and facilities, not on the corporation, whose affiliate holds development rights in the adjoining condominium complex and easements in the plant.

95-748 (7/27/95)
Tax Titles.
Abatement of Taxes in Tax Title Accounts.
An abatement of taxes certified to a tax title account by the collector under G.L. Ch. 60 §61 should be charged to the overlay, with any reduction in interest reflected in an adjustment to the tax title receivable account. The collector should give the treasurer and accountant an amended certification of the amount of the tax, together with an interest calculation on the unpaid balance of the tax as abated up to the date of the original certification, with a copy of the abatement certificate. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

95-820 (8/17/95)
Liens.
Enforcement of Local Tax Liens for Assessment of Phased Condominium Development Rights.
The value of land subject to a developer's right to build future units in a phased condominium development should be assessed to the developer as separate units under G.L. Ch. 183A §14 after authorization from the commissioner of revenue under G.L. Ch. 59 §11 to assess taxes to the owner of a present interest in property. The lien for such an assessment at least attaches to the developer's interest and a municipality should be able to foreclose against that interest where the development rights have not expired and the lien has not been lost. It is unclear whether the lien could be enforced against the unit owners where the development rights have expired. Also found under **ASSESSMENT ADMINISTRATION.**

95-834 (9/27/95)
License/Permit Denials, Revocations or Suspensions.
Collection of Personal Property Taxes from Businesses Now Operating on Sites Where Delinquent Businesses were Conducted.
A municipality may not deny or revoke licenses held by a new business in order to collect the outstanding personal property taxes assessed to another business that had previously operated on the same property under G.L. Ch. 40 §57. The statute applies to businesses conducted on real estate, the owner of which real estate is delinquent.

95-864 (10/2/95)
Tax Titles.
Amount Certified as Subsequent Years' Taxes. Calculation of Interest on Amounts Certified as Subsequent Taxes.
Tax title interest is calculated on the entire amount certified as subsequent year's taxes, which would include any interest and charges that have accrued to the date of certification. Certification of subsequent year's taxes should not be made until after the due date for the last installment payment for the fiscal year. While the statute does not preclude earlier certification, it is unlikely the legislature intended to deprive a taxpayer of the opportunity provided under other provisions of law to pay the current year's tax without incurring interest. **Also see 95-91 (7/5/95) (Interest accrues in a tax title account on the original amount, including interest and fees, for which the property was originally taken from the date of taking, and all amounts certified by the collector for subsequent years, from the date of certification. The interest is calculated on the total amount certified by the collector, including interest that had accrued before the collector certified the amount to the treasurer).**

95-951 (10/2/95)
Liens.
When Water/Sewer Liens Are Added to Taxes.
Overdue water and sewer charges constituting liens are added to a year's tax under G.L. Ch. 40 §42C and Ch. 83 §16C when that tax is committed to the collector. Each installment payment is not a separate tax to which any overdue charges can be added. In the case of community using semi-annual payment system, this means overdue charges cannot first be added to the second half bill. They must be added to the year's tax at commitment and are payable in the first half installment under G.L. Ch. 59 §57. Also explains duration of liens. **Also see 93-149 (3/4/93).** Also found under **LIENS**.

95-1079 (11/27/95)
Interest/Collection Costs.
Processing or Service Expenses Incurred by Municipalities in Collecting Taxes.
An $84 per parcel service fee charged a municipality for services performed by a bank under contract to assist in the collection of delinquent taxes cannot be added to the tax owed by the delinquent property owner. The addition of any service, administrative or legal charges must be expressly authorized by statute, and there is no authority to add this type of fee.

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95-550 (9/27/95)
Multiple Offices.
Elected Assessors Appointed as Assistant Assessors. Elected Treasurers Serving In Other Treasury Positions. Appointed Accountants Working for Auditors. Appointed Fire Chiefs Serving as Call Firefighters. An elected assessor could be appointed by the board of assessors to the assistant assessor position with a salary fixed by town meeting under G.L. Ch. 41 §4A and G.L. Ch. 268A §21A, if so authorized by annual town meeting. However, an assessor could not receive an hourly wage as an assessor or other position in the assessing department. A written disclosure of financial interest must be made to the selectmen and the selectmen must approve the exemption under G.L. Ch. 268A §20. An elected treasurer could not appoint himself to another position in the department and any extra work he performs would have to be compensated from the salary fixed by town meeting under G.L. Ch. 41 §108. An appointed accountant could be paid for additional work in aiding the auditor, but the work appeared to be within the incidental duties of the accountant and should be compensated from the salary account. The fire chief would appear to have a conflict in interest in assigning himself to appear at fires in a role as a call firefighter rather than as fire chief. His salary should be adjusted and he should be allowed to determine when he had to appear at a fire. **For an official position on this issue, local officials should consult the state ethics commission which is responsible for the administration of the Conflict of Interest Law.** Also found under **LOCAL OFFICIALS AND EMPLOYEES**.

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93-249 (3/31/93)
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Funding Pay Raises Under Collective Bargaining Agreements.
A county may not pay salary increases negotiated under a new collective bargaining agreement without an appropriation by the county advisory board that has been approved by the county government finance review board under G.L. Ch. 64D §12. **Also see 95-699 (7/12/95) (A new collective bargaining agreement cannot take effect until the pay raise and any other cost items have been funded by an advisory board appropriation approved by the county government finance review board).**

94-299 (4/11/94)
Officials and Employees.
Salaries/Compensation.
Fixing Sheriffs' Salaries.
The salary of a sheriff must be fixed by vote of the county advisory board because even though the sheriff's departmental budget is funded in large part by the commonwealth, the legislature's appropriations for county correction purposes are not made in detailed line items that could serve to fix the salary.

94-455 (5/18/94)
Budgets.
Line Item Transfers in County Agricultural School Budgets.
The trustees of county agricultural school do not have the powers of local or regional school committees to transfer between line items within their operating budgets and are bound by those items unless a transfer is approved by the county advisory board.

94-696 (8/25/94)
Financial Procedures.
Disbursement Procedures.
Approval of Departmental Bills.
The standards to be used by the county commissioners in reviewing departmental bills for payment under G.L. Ch. 35 §11 are essentially those used by boards of selectmen under G.L. Ch. 41 §52. That section gives selectmen the power to refuse to approve for payment any claim that is fraudulent, unlawful or excessive. Excessive means a bill in excess of the unencumbered balance of the appropriation line-item or grant funds that the department has available to pay the claim. The commissioners cannot refuse to pay bills for work performed under a valid contract simply because they think it was unwise for the department to enter into that contract. While not required to do so, the commissioners should file a statement of their reasons for disallowing the payment of any bill.

95-229 (5/31/95)
Officials and Employees.
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Pay Raises for Elected County Officials.
Compensation for elected county officials, including pay raises, is governed by classifications set by the county personnel board, subject to appropriation approved by the county advisory board and county government review board.

95-840 (8/21/95)
Officials and Employees.
Advisory/Finance Boards.
Appropriation of State Correctional Grants for Pay Increases under Collective Bargaining Agreements.
In the year of execution of a collective bargaining agreement, the county advisory board as legislative body for the county must appropriate funds to cover increases in cost items provided in contract. Although state grants to counties for corrections purposes may be spent without appropriation, the contracts are not binding without an appropriation. The county advisory board may appropriate from the grant funds, with approval of the sheriff, to cover pay increases in new collective bargaining agreements.

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92-143 (3/3/92)
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Local Taxation of District Properties by Member Municipalities.
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The property of a solid waste disposal district devoted to a public purpose is exempt from local taxation and therefore, a member of the district may not assess property taxes on district property located within the municipality. Nor may the member require a payment in lieu of tax on the property under G.L. Ch. 59 §5F because the property is located within a member municipality. Also found under **EXEMPTIONS; PUBLIC PROPERTY**.

92-934 (12/1/92)
Taxation.
Payment of Interest on District Tax Abatement Refunds.
Interest must be paid on district taxes refunded as a result of abatements. The district should reimburse the municipality acting on its behalf in the administration of the tax for any refunds and interest paid to taxpayers. Interest payments should be charged to a district appropriation for that specific purpose or an appropriation for interest payments on short term borrowings. Also found under **ABATEMENTS AND APPEALS**.

93-86 (2/2/93)
Taxation.
Applicable Property Tax Exemptions.
District Meetings.
Adoption of Local Option Property Tax Exemptions.
The property tax exemptions provided under G.L. Ch. 59 §5 apply to district as well as municipal property taxes. If the district wishes to have any of the local option exemptions apply to its tax, such as clauses 17D, 41C or 50, the optional exemption statute must be accepted by vote of the district meeting. Also found under **ASSESSMENT ADMINISTRATION; EXEMPTIONS**.

93-153 (4/3/93)
Officials and Employees.
Fixing Compensation of District Assessors and Collectors.
The selectmen, not the assessors (or collector) determine with the prudential committee of a district the appropriate compensation to be paid to the assessors (or collector) for the additional duties imposed by the district. Also found under **LOCAL OFFICIALS AND EMPLOYEES**.

94-333 (5/9/94)
District Meetings.
Appropriations and By-laws to Indemnify Firefighters.
A special purpose district meeting may not enact a by-law permitting the district to indemnify any of its firefighters, who accidentally become disabled, for medical and other costs relating to the disabilities, nor appropriate monies for indemnification purposes, because districts do not have the power granted cities and towns under the Home Rule Amendment to exercise by by-law any power or function the legislature could confer on them. To establish an indemnification fund, a district's enabling legislation would have to be amended by the legislature. Also found under **HOME RULE**.

95-668 (7/7/95)
Taxation.
Betterments and Special Assessments.
Charitable and Governmental Properties.
Fire and other special purpose districts may not levy annual property taxes on any public property (federal, state or local) used for governmental purposes, nor on any property owned by a charitable, educational or religious organization used for purposes that qualifies it for exemption from municipal taxation under G.L. Ch. 59 §5 or other statute. However, the non-public properties would be subject to special taxation by the district for the construction of public improvements, *i.e.*, betterments and special assessments.

95-731 (8/17/95)
Officials and Employees.
Appointment of Assistant Assessors By Prudential Committees.
The prudential committee of a district where the assessment function has been vested in the boards of assessors of the two towns in which the district is located cannot appoint an "assistant assessor" or other person to perform any valuation, or other task, required to determine district assessments. However, if the appointee will only be responsible for identifying the district proprietors to be assessed, which under the district's enabling legislation is the responsibility of district officials, not the assessors, or for performing other tasks apart from the actual assessment process, the fact that the committee chose to call the position "assistant assessor" does not preclude the appointment. Also found under **LOCAL OFFICIALS AND EMPLOYEES**.

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87-786 (12/1/87)
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Personal Exemptions.
Applicability of Minimum Taxable Valuation Requirement in Municipalities Where Residential Exemptions Not Adopted.
The provisions of G.L. Ch. 59 §5C limiting the extent to which a tax assessed on residential property may be reduced by the application of certain personal exemptions applies in any city or town, whether or not a residential exemption has been adopted. Also found under **CLASSIFICATION AND TAXATION BY USE.**

88-716 (12/1/88)
Residential Exemptions.
Occupancy.
Domicile.
Occupancy Requirements for Multiple Owners.
A full residential exemption is applied to reduce the taxable value of a residential property with multiple owners, so long as at least one of the owners occupies the property as his or her domicile on January first, except to the extent of the minimum tax requirements of the statute.

89-802 (3/6/90)
Charitable Organizations.
Properties Being Renovated as Group Homes for Mentally/Physically Handicapped.
Group Homes as Facilities for Treatment of Mental Diseases.
An organization formed under G.L. Ch. 180 as a non-profit corporation for the purpose of establishing and operating group homes for mentally and physically handicapped persons is a charitable organization and is entitled to an exemption under G.L. Ch. 59 §5(3) on property it owns as of July first, but does not occupy because it is being renovated for use as such a home. The property of a charitable organization does not have to actually be occupied by the organization if it is acquired with the intent of occupying it for charitable purposes and no more than two years from the date of purchase has passed. Since the facility is not providing clinical, therapeutic or diagnostic services to persons suffering from mental disease in an institutional setting, the exemption may be granted by the assessors without municipal approval of the acquisition as set forth in G.L. Ch. 59 §5(3)(d).

89-932 (12/7/89)
Public Property.
Conservation Land In Abutting Municipalties.
The portion of a large tract of land given to a town for conservation purposes that is located in the neighboring town is exempt from taxation. However, the town owning the land must make a payment in lieu of taxes on the land to the town in which the land is located under G.L. Ch. 59 §5F. Also found under **PUBLIC PROPERTY**.

91-808 (12/17/91)
Residential Improvements to House Older Persons.
Extra Bedrooms, Baths Within Houses as Eligible Improvements.
Any addition to a house, or conversion of existing space within or attached to the house, such as the basement, attic or garage, that results in living accommodations for a person sixty or older qualifies for exemption under G.L. Ch. 59 §5(50), but construction or conversion of a structure detached from the house does not. The improvements may consist of a new bedroom for the older person's use. Creation of an additional housing unit, complete with kitchen facilities is not required. **Also see 95-02 (1/5/95) (A single family home improved with a bathroom, bedroom and den/living area on the first floor may qualify for exemption under G.L. Ch. 59 §5(50) even if the rooms do not constitute a complete and physically separate housing unit, if built to provide living accommodations for a person 60 or older).**

92-32 (6/2/92)
Public Property.
Federal Credit Union Properties Occupied for Private Purposes During Federal Conservatorships.
Property of a federal credit union is exempt from taxation while in conservatorship of or liquidation by the national credit union administration, a federal instrumentality. However, if it is occupied by private persons or entities for non-governmental purposes, it may be assessed to the occupants under certain circumstances. G.L. Ch. 59 §2B & 3E. **Also see 94-37 (1/25/94).** Also found under **PUBLIC PROPERTY**.

92-51 (1/28/92)
Charitable Organizations.
Vacant Land Acquired for Future Use.
Vacant land acquired by a college before July first may be eligible for an exemption under G.L. Ch. 59 §5(3) if the college intended as of July first to occupy the property for its charitable purposes within two years of the acquisition date even though the land was assessed to its owner as of January first. If the parcel qualifies for exemption, the college, as a subsequent purchaser, may obtain the exemption by filing an abatement application.

92-143 (3/3/92).
Public Property.
Taxation of District Property By Member Municipalities.
Taxation of Municipal Enterprise Property.
The property of a solid waste disposal district devoted to a public purpose is exempt from local taxation and, therefore, a member of the district may not assess property taxes on district property located within the municipality. Nor may the member require a payment in lieu of tax on the property under G.L. Ch. 59 §5F because the property is located within a member municipality. The property of a municipal enterprise belongs to the municipality, not the enterprise, and is not subject to taxation or a payment in lieu of tax. Also found under **DISTRICTS; PUBLIC PROPERTY; SPECIAL FUNDS**.

92-309 (5/28/92)
Residential Exemptions.
Domicile.
Occupancy.
Effect of Sales After January 1 on Exemption Eligibility.
Applications by New Owners of Eligible Residences.
A residential exemption adopted by a municipality under G.L. Ch. 59 §5C was applicable to a property occupied by the assessed owner as his domicile on January first and is not affected by the subsequent sale of the property. If the exemption was not applied, the new owner may apply for the exemption because an application for exemption under G.L. Ch. 59 §5C is treated as an application for abatement under G.L. Ch. 59 §59 and a subsequent purchaser of property may file such an application.

92-491 (6/2/92)
Charitable Organizations.
Hospital Areas Leased to For-profit Medical/Dental Offices.
The portion of a hospital leased to for-profit medical or dental offices is not exempt from taxation under G.L. Ch. 59 §5(3).

92-510 (6/4/92)
Personal Exemptions.
Ownership.
Elderly Persons.
Eligibility of Occupants of Cooperative Housing Projects.
Elderly occupants of a cooperative housing project are not eligible for personal property tax exemptions because units in a cooperative are not individually owned and taxed like condominium units. The property is owned by the cooperative housing corporation, not the occupants, and is to be assessed to the corporation as a single unit. Also found under **ASSESSMENT ADMINISTRATION**.

92-523 (7/1/92)
Charitable Organizations.
Temporary Living Quarters for Out-patients.
Real estate owned by a non-profit corporation that provides accommodations and other services for persons who travel to the area to receive long or short term, out-patient medical treatment at local hospitals, is occupied by the organization and qualifies for a tax exemption under G.L. Ch. 59 §5(3) because the patients who temporarily reside there while undergoing treatment are boarders or lodgers, not tenants with a leasehold interest in the property.

92-661 (9/10/92)
Fraternal Organizations.
Charitable Organizations.
Qualification of Fraternal Organizations for Real and Personal Property Tax Exemptions.
All of the personal property of a fraternal organization is exempt from taxation under G.L. Ch. 59 §5(7), but none of its real property is exempt unless the organization also satisfies the requirements of G.L. Ch. 59 §5(3) for a charitable exemption. To be eligible for that exemption, the organization must be organized and operated as a public charity, the dominant use of the property for which the exemption is sought must be charitable, not fraternal, social or commercial, and all necessary filings, including a form 3ABC and a copy of the form PC, the annual report to the public charities division of the attorney general's office, if required, must be made timely. **Also see 92-177 (4/13/92) (An organization formed under G.L. Ch. 176 is a fraternal benefit society operating under a lodge system and all of its personal property is exempt from taxation under G.L. Ch. 59 §5(7). However, its real property is taxable because G.L. Ch. 176 §49 expressly provides that organizations formed or licensed under Ch. 176 are not exempt from real estate taxes. Moreover, the organization does not qualify for a charitable exemption under G.L. Ch. 59 §5(3) because its dominant purpose is to benefit its members, not the public, and therefore it is not a charitable organization for exemption purposes); 95-352 (5/16/95) (Portions of real estate owned by a fraternal organization and used as handball courts, an exercise room, a game room, a pool and lounge area are taxable even if the organization qualifies as a public charity because they are used for social, not charitable purposes. However, areas used as a library and main hall may be exempt depending on their dominant use): 95-464 (6/30/05) (Real estate owned by the Fraternal Order of Eagles, Inc. is not exempt unless the order makes all necessary filings timely and demonstrates that is organized as a charitable organization, it occupies the property, or the portion upon which it seeks exemption, for the performance of its charitable purposes and not primarily for some social or commercial use, and none of its income and assets on dissolution may be distributed to stockholders, trustees or members, or used for other than charitable purposes).**

92-745 (9/25/92)
Religious Organizations.
Church Parking Lot Leased for Public Use.
A parking lot owned by a religious organization, which is located opposite the church building it services, is available for the use of worshipers during services, and is available at all other times for use by patrons of local businesses under a lease agreement between the organization and the municipality, is not being used for religious purposes, nor being used for other purposes in only an occasional or incidental manner, and therefore, it is not exempt from taxation under G.L. Ch. 59 §5(11).

92-771 (12/2/92)
Charitable Organizations.
Proposed Development of Vacant Land as Conference Center and Golf Course.
Vacant land owned by a charitable organization which is adjacent to the historical outdoor museum operated by the organization and is the site of a proposed conference center and golf course for which a zoning change and special permit have been approved, is occupied by the organization for its charitable purposes and qualifies for an exemption under G.L. Ch. 59 §5(3) prior to its development only if used to support and directly promote the museum as of July first.

92-795 (12/21/92)
Personal Exemptions.
Ownership.
Eligibility of Lifetime Lessees for Personal Exemptions.
A person who has been granted a lifetime lease by a sealed instrument has received a life tenancy, and, if the lease has been recorded, is the owner of the property for assessment and personal exemption purposes. **Also see 93-827 (10/13/93); 93-806 (10/25/93) (A person who conveys title to her domicile to her daughter and on the same day enters into a lifetime lease of the property with the daughter under which in lieu of rent she is obligated to pay the mortgage, real estate taxes, general maintenance and repairs and utilities, holds a life estate determinable and satisfies the ownership requirement for a personal exemption).** Also found under **ASSESSMENT ADMINISTRATION**.

92-796 (9/8/92)
Private Retirement Associations.
Exemption of Real Property.
The exemption found in G.L. Ch. 59 §5(9) for the property of private retirement associations applies only to intangible property interests, such as employees' and retirees' pension rights and interests in the association, not to any real property owned by the association.

92-810 (10/8/92)
Charitable Organizations.
Homing Pigeon Clubs.
A corporation organized under G.L. Ch. 180 for the purpose of breeding, racing, testing and developing homing pigeons trained to fly to specific locations which has a limited and relatively unchanging membership is a pleasure, recreational or social club, not a charitable organization entitled to a tax exemption under G.L. Ch. 59 §5(3).

92-854 (11/4/92)
Charitable Organizations.
Hunting/Fishing/Shooting Clubs.
A corporation organized under G.L. 180 for the purpose of promoting hunting, fishing, trapping and shooting and operated for the enjoyment of its members is a social club, not a charitable organization entitled to a tax exemption under G.L. Ch. 59 §5(3).

92-861 (10/15/92)
Personal Exemptions.
Trusts.
Beneficiaries of Separate Trusts That Hold Beneficial Interest in Domicile.
An elderly person who places her domicile in trust, does not name herself as one of the trustees, and names a second trust, of which she is a beneficiary, as the sole beneficiary of the first trust does not qualify for a personal exemption under G.L. Ch. 59 §5(41C). To be considered the owner for exemption purposes, the applicant must have record legal title, *i.e.*, be one of the trustees, as well as a sufficient beneficial interest in the property in the particular trust in which the domicile is held. Here, the applicant has neither. **Also see 91-1091 (1/10/92); 94-999 (1/4/95); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

92-871 (10/15/92)
Filings.
Fraternal Organizations.
Religious Organizations.
Veterans' Organizations.
Annual Filing Requirements for Exemptions.
Religious, veteran and fraternal organizations that might qualify for a charitable exemption under G.L. Ch. 59 §5(3) do not have to include a copy of an annual report and financial statement (form PC) with their form 3ABC if they are not required to file a report with the public charities division of the attorney general's office.

92-884 (10/22/92)
Public Property.
Commencement of Exemption for Properties Acquired After July 1.
The owner of property on January first remains liable for taxes assessed on that property for the entire fiscal year, even though it was acquired by an improvement district later that year. The property would qualify for an exemption only if the district had acquired it before July first. A tax taking and foreclosure to enforce collection is not expressly prohibited, but the land court might not permit foreclosure on property of a political subdivision on public policy or other equitable grounds. The tax may also be collected by suit against the assessed owner or use of the set-off procedure. Also found under **COLLECTION PROCEDURES; PUBLIC PROPERTY**.

92-905 (10/30/92)
Surviving Spouses/Minors.
Death of Firefighters from Lung Cancer.
A surviving spouse of a firefighter who died from lung cancer does not qualify for a property tax exemption under G.L. Ch. 59 §5(42). While the firefighter is presumed to have died in the line of duty for pension or annuity purposes, he was not killed in the line of duty as required by the exemption statute. Killed in the line of duty means death as a result of some violent act or occurrence of violent external physical force to the body while in the performance of duty, not as a result of illness that may have caused by exposure to hazards peculiar to firefighting.

92-933 (12/10/92)
Personal Exemptions.
Trusts.
Ownership.
Holders of Right to Occupy Domicile for Life as Trust Beneficiaries or Life Tenants.
A person who places her domicile in an inter vivos trust and reserves the right to live there for her life satisfies the ownership requirement for a personal exemption under G.L. Ch. 59 §5 if the reservation constitutes a legal interest because the person holds legal title to the property as a tenant in common with the trustee(s). However, if the reservation constitutes a beneficial interest, then she must also name herself as a trustee to satisfy the ownership requirement. If the reservation is made in a testamentary trust, the person has established a legal life estate that precedes the trust estate and is considered to be the owner of the property for exemption purposes. **Also see 92-574 (8/10/92) (Discusses distinction between a life estate and a trust where the beneficiary retains the right to live in the property for life; 94-47 (2/17/94) (A beneficial interest, not a legal life estate, is reserved where an inter vivos trust provides that during the lifetime of the settlor and his spouse, the trustee is not to sell, mortgage or otherwise encumber the settlor's principal residence without his consent and the settlor and his spouse have the right to possession and enjoyment of the principal residence); 94-822 (10/28/94) (A legal life estate is reserved where a person conveys her property to an inter vivos trust "reserving to herself the right to occupy, rent or improve the granted premises during her lifetime without right of partition"); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

92-940 (10/21/92)
Elderly Persons.
Gross Receipts.
Whole Estates.
Properties Owned by Elderly Persons Jointly with Adult Children.
An elderly person who owns her domicile jointly with her adult daughter will qualify for an exemption under G.L. Ch. 59 §5(41C) if the daughter also meets the gross receipts and total worth requirements. The daughter must meet these tests even though she is not domiciled in the house and does not contribute to household expenses. The amount of any exemption granted would be proportionate to the elderly person's ownership interest in the property, which in this case is 50% of the $500 exemption, or $250.

92-955 (11/4/92)
Personal Exemptions.
Trusts.
Trustees Who Hold Right to Use and Occupy Domicile for Life.
A person who places her domicile in trust and retains significant rights to use the trust property, including the unrestricted right to live there for her life, has a sufficient beneficial interest in the property for a personal exemption. Since she named herself as the sole trustee of the trust, she has both the legal and beneficial interest required to be considered the owner of the property for purposes of an exemption under G.L. Ch. 59 §5(22). **Also see 94-197 (4/19/94) (The right to occupy the property held in trust is a sufficient beneficial interest in the property for personal exemption purposes); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

92-988 (1/6/93)
Charitable Organizations.
Rental Housing for Low Income Elderly.
Real estate owned by a charitable organization that provides subsidized housing for low income elderly persons under lease does not qualify for a tax exemption under G.L. Ch. 59 §5(3) because the property is not occupied by the organization or its officers, but by the tenants. The personal property of the corporation would be exempt, however.

92-1001 (11/9/92).
Hardship Exemptions.
Eligible Ages.
A person must generally be in his or her 60's to be "aged" under G.L. Ch. 59 §5(18), the hardship exemption.

92-1006 (11/20/92)
Elderly Persons.
Whole Estates.
Inclusion of Assets Held as Trustee in Whole Estate.
Property held by an elderly person in her capacity as a trustee must be included in her total worth when considering eligibility for an exemption under G.L. Ch. 59 §5(41C) because she holds legal title to the trust property.

92-1011 (11/20/92)
Charitable Organizations.
Properties Acquired for Future Hospital Use and Lease as Doctors' Offices.
Property acquired by a hospital with the intent of using it for hospital purposes is eligible for an exemption under G.L. Ch. 59 §5(3) while undergoing renovation for two years from the acquisition date. However, portions of the property leased during that time to non-charitable entities and portions the hospital intends to lease or make available to doctors for private practice are taxable to the hospital.

92-1058 (1/15/93)
Charitable Organizations.
Classified Forest Land Owned by Conservation Organizations and Subject to Approved Management Plans.
Land classified as forest land under Ch. 61 and subject to an approved forest management plan is exempt from taxation under both G.L. Ch. 59 and Ch. 61 where it is owned by a conservation organization that qualifies as a tax exempt charitable organization under G.L. Ch. 59 §5(3) and is held and managed for restoration and conservation purposes consistent with the approved management plan. The organization is not subject to a withdrawal penalty tax simply because it qualifies for exemption from taxation. It would not become subject to a withdrawal tax unless the land is withdrawn from classification or classification expires. The organization should apply for exempt status by filing form 1-B-3 (or an abate-

ment application) and must file form 3ABC annually, with a copy of the PC form filed with the attorney general's public charities division. Also found under **FOREST LAND (CH. 61)**.

92-1061 (12/10/92)
Personal Exemptions.
Domicile.
Occupancy.
Eligibility Where House Constructed Between January and July 1.
A person who purchases a house constructed after January first and is domiciled in that house as of July first qualifies for a personal exemption under G.L. Ch. 59 §5(22) even if taxes for the year are assessed on the land only.

93-32 (1/22/93)
Public Property.
Commencement of Exemption for Properties Acquired by Eminent Domain.
Property taken by eminent domain by a municipality (or the United States or the Commonwealth of Massachusetts) is exempt from taxation for the fiscal year beginning on the July first following the taking. Also found under **PUBLIC PROPERTY**.

93-62 (1/22/93)
Applications.
Submission and Confidentiality of Income Tax Returns As Part of Exemption Applications.
A board of assessors may request applicants for personal exemptions to submit copies of their income tax returns if that information is reasonably necessary to substantiate that the applicants meet the exemptions' requisites. Any returns submitted as part of the application are confidential under G.L. Ch. 59 §60. Also found under **ABATEMENTS AND APPEALS; PUBLIC RECORDS**.

93-67 (4/12/93)
Charitable Organizations.
Qualification of "For Profit" Business Corporations Operating Group Homes.
A domestic corporation organized under G.L. Ch. 156B, which owns and operates a group home for mentally retarded persons, does not qualify for a charitable exemption under G.L. Ch. 59 §5(3) because it is established "for the purpose of carrying on business for profit" under G.L. Ch. 156B §3.

93-86 (2/2/93)
Personal Exemptions.
Adoption of Local Option Property Tax Exemptions by Districts.
The property tax exemptions provided under G.L. Ch. 59 §5 apply to district as well as municipal property taxes. If the district wishes to have any of the local option exemptions apply to its tax, such as clauses 17D, 41C or 50, the optional exemption statute must be accepted by vote of the district meeting. Also found under **ASSESSMENT ADMINISTRATION; DISTRICTS**.

93-94 (2/12/93)
Charitable Organizations.
Filings.
Annual Filing for Real Estate Leased by Charitable Organizations to Other Charities.
A charitable organization leasing real estate owned by another charitable organization is not required to file forms 3ABC and PC for that property to be exempt from taxation under G.L. Ch. 59 §5(3). The owner, not the tenant, must comply with the 3ABC and PC filing requirement for the exemption to be granted.

93-217 (4/14/93)
Charitable Organizations.
Scholarship Awards by Sporting Club as Charitable Purpose.
A sporting club organized to provide a setting for members and their families to "meet, socialize, become involved in recreational and other pleasurable activities, and discuss topics of interest" does not qualify for a charitable exemption under G.L. Ch. 59 §5(3) even though it awards scholarships to deserving recipients in the community. The primary purpose of the club is social and recreational, not charitable, in nature.

93-256 (4/15/93)
Personal Exemptions.
Occupancy.
Eligibility of Persons in Nursing Homes.
A person confined to a nursing home who has a reasonable expectation of leaving the nursing facility and returning home satisfies the domiciliary requirements for a personal exemption, unless the property is rented or used in some manner inconsistent with a deemed occupancy by the confined owner.

93-478 (6/23/93)
Personal Exemptions.
Trusts.
Trustees Without Beneficial Interest in Domicile.
A person who places his domicile in trust, names himself as co-trustee with his daughter and names his daughter and grandson as beneficiaries has a legal interest in the property, but does not have any beneficial interest in the property and does not qualify for a personal exemption under G.L. Ch. 59 §5(22). To be considered the owner for exemption purposes, the applicant must have record legal title, *i.e.*, be one of the trustees, and have a sufficient beneficial interest in the property. **Also see 92-717 (8/10/92) (A person who places his domicile in trust and names himself as a co-trustee with his wife, but does not retain any beneficial interest in the property does not have a sufficient ownership interest to qualify for a personal exemption under G.L. Ch. 59 §5(22). To be considered the owner for exemption purposes, the applicant must have record legal title, *i.e.*, be one of the trustees, and have a sufficient beneficial interest in the property. Here, the applicant has only legal title); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

93-554 (7/21/93)
Energy/Environmental Facilities.
Eligibility of Restored Hydropower Facilities.
Filings.
Annual Certifications and Payments in Lieu of Taxes.
A pump house built in 1983 to generate hydroelectric power that did not qualify for the twenty year property tax exemption under G.L. Ch. 59 §5(45A) for the first few years after construction because mechanical problems prevented its use and the owner did not enter into an agreement with the town to pay the payment in lieu of tax required by statute, may qualify for the exemption for the remainder of the twenty year eligibility period if the pump house is now going to be regularly used to generate power and the in lieu of tax is paid annually. The owner should make an application for the next fiscal year and the property would remain off the tax rolls until the end of the twenty year exemption period, provided the owner annually certifies to the assessors that the property is still being used to generate power and the payment in lieu of tax has been paid for the year.

93-635 (8/17/93)
Charitable Organizations.
Rental Housing for Homeless/Low Income Persons.
Administrative Offices/Employment Centers/ Shelters of Anti-Poverty/Homeless Organizations.
Real estate owned by a non-profit corporation whose purpose is to preserve existing housing stock and develop additional stock, if necessary, for low and moderate income people, that contains private rooms rented to low income homeless persons under formal lease agreements with federal rent subsidies does not qualify for a tax exemption under G.L. Ch. 59 §5(3) because the property will not be occupied by the organization or its officers, but by the private tenants. **Also see 93-359 (5/26/93) (A multi-family residential property to be acquired and rehabilitated by a non-profit anti-poverty corporation and rented to low income persons would not be occupied by the tenants and would not be exempt under G.L. Ch. 59 §5(3)); 93-629 (8/20/93) (A parcel of vacant land acquired by a non-profit corporation organized to provide affordable housing for low-income persons is not exempt under G.L. Ch. 59 §5(3) because the organization does not intend to occupy the site itself for its purposes, but rather intends to construct a single-family home on the site and sell it to a low income family who will occupy it); 94-391 (5/16/94) (The portion of any property acquired by a non-profit corporation organized to provide shelter, food and other services to the homeless and needy that is rented to tenants as residences or is vacant, but intended for rental, whether at market rate, reduced rates or subsidized housing, is not occupied by the organization and not eligible for a charitable exemption under G.L. Ch. 59 §5(3). The portion used by staff for educational or administrative purposes or used as temporary or extended shelters for the homeless, without the creation of a property right in the resident, is occupied by the charity and entitled to exemption. In addition, any portion which is vacant but is intended to provide space for staff or provide an employment center for the homeless, poor or needy may be exempt for not more than two years from acquisition. Thereafter, it must be occupied by the charity as of the applicable July first qualification date to be entitled to exemption for a particular fiscal year).**

93-678 (11/12/93)
Charitable Organizations.
Residential and Training Programs for Special Needs Adults.
Personalty Used in Catering Programs for Special Needs Adults.
A non-profit organization formed under G.L. Ch. 180 for the purpose of providing various residential support and rehabilitation programs for physically and mentally disabled persons is a charitable organization and even if a catering business and gift shop it operates to train special needs adults for jobs in the food preparation and service industry is considered a commercial rather than charitable purpose, any personal property it owns and uses in connection with the catering operation is exempt from taxation under G.L. Ch. 59 §5(3). A charitable organization's personal property does not have to be used for charitable purposes to be exempt, unlike its real estate.

93-682 (8/24/93)
Public Property.
Underground Water Pipes and Mains/Other Personal Property Located in Adjoining Municipalities.
Personal property owned by a municipality, located in an adjoining municipality and used to supply water and fire protection for the adjoining municipality, is exempt from taxation by the adjoining municipality. This includes any underground conduits, pipes and mains placed in public ways that would be taxable under G.L. Ch. 59 §§ 5(16)(1) and 18(5) if owned by a private water company rather than a municipality. Also found under **PUBLIC PROPERTY**.

93-810 (11/12/93)
Charitable Organizations.
Educational Facility Housing for Autistic Students.
Two single family houses owned by a charitable organization that operates an educational facility for autistic people and used to provide housing for its students, who require twenty-four hour supervision and are transported to the educational facility during the school day, is occupied by the organization and qualifies for a tax exemption under G.L. Ch. 59 §5(3) because the students do not possess any interest in the property, like lease-holders. The property merely provides temporary dormitory-like lodging for the students.

94-14 (1/13/94)
Elderly Persons.
Gross Receipts.
Whole Estates.
Treatment of Annuity Payments and Assets.
Any payments received by an applicant for an elderly exemption under G.L. Ch. 59 §5(41C) from an annuity, whether includible in total income for federal income tax purposes or not, are part of the applicant's gross receipts for property tax exemption purposes. The balance of the annuity that may be withdrawn as a lump sum is to be included in the total worth of the applicant.

94-40 (3/9/94)
Public Property.
Public Skating Rinks Operated by Private Companies.
Real estate owned by the commonwealth on which is located a public skating rink operated by a private company under a concession agreement is taxable under G.L. Ch. 59 §2B to the company, which has a license to use the premises and is in business to earn a profit on the site, where the rink is not reasonably necessary for park purposes. Any personal property owned by the commonwealth and located at the site is exempt even if used by the operator. Machinery owned by the operator used in the operation of the rink would be taxable to the operator in the same manner as if the corporation was operating its business on private property. G.L. Ch. 59 §5(16)(2). Also found under **PUBLIC PROPERTY**.

94-51 (1/31/94)
Deferrals.
Continued Deferral Where Properties Conveyed with Reserved Life Estates.
Taxes deferred on a property under G.L. Ch. 59 §5(41A) are due and payable where the taxpayer conveyed a vested remainder to his niece and retained a life estate. Interest would be owed on the deferred amount at 8% per year until the conveyance date and at 16% per year thereafter. Also found under **COLLECTION PROCEDURES**.

94-64 (2/4/94)
Domicile.
Household Furniture and Effects at Second Home of Husband and Wife Claiming Separate Domiciles.
A husband and wife who own multiple residential properties, either singly or jointly, and who do not regularly live together may have different domiciles. However, if they do live together, only one of the properties can be the couple's domicile and the household furniture and effects at the second home are not exempt from personal property taxation under G.L. Ch. 59 §5(20). Also found under **PERSONAL PROPERTY**.

94-175 (3/29/94)
Religious Organizations.
Land Used for Recreational Purposes.
Land owned by a religious organization, which is located several miles from the church building, has a cross erected upon it and is used primarily for athletic and recreational activities for members of the parish, does not qualify for exemption under G.L. Ch. 59 §5(11), nor under G.L. Ch. 59 §5(3). For land to be exempt under G.L. Ch. 59 §5(11), it must be necessary and incidental to the use of a church building or a parsonage, which would include the land upon which the church or parsonage is built and any surrounding land reasonably necessary for access to the building or some ancillary use. Here, the land is not near the church building, nor is a parsonage or other ecclesiastical building situated on or contiguous to it.

94-177 (4/8/94)
Public Property.
Properties Forfeited to Commonwealth for Illegal Drug Activity.
Property for which the district attorney sought and obtained forfeiture because of its use in connection with illegal drug activity belongs to the commonwealth under G.L. Ch. 94C §47 and is exempt from taxation under G.L. Ch. 59 §5(2). If the property is then sold, the new owner will owe a pro rata pro forma tax under G.L. Ch. 59 §2C. Also found under **ASSESSMENT ADMINISTRATION; PUBLIC PROPERTY**.

94-257 (9/6/94)
Public Property.
U.S. Postal Service Properties Leased to Private Businesses.
The portion of a building owned by the United States Postal Service leased to and used by an individual conducting a real estate business is not exempt from taxation, but is taxable to the lessee under G.L. Ch. 59 §3E. Also found under **PUBLIC PROPERTY**.

94-260 (4/22/94)
Charitable Organizations.
Group Homes/Halfway Houses for Emotionally Disturbed Teens.
Property owned by a charitable organization, which operates a school in another community for emotionally disturbed adolescents who in most instances are unable to be taught in public schools, and used as a residential, group home for the troubled teens is occupied by the organization and eligible for a charitable exemption under G.L. Ch. 59 §5(3). A group home or half-way house such as this is considered to be occupied by the organization because the residents have a limited possessory interest in the property and enjoy little expectation of privacy.

94-267 (5/19/94)
Elderly Persons.
Gross Receipts.
Treatment of Reverse Mortgage Annuity Payments.
Monthly payments received by an applicant for an elderly exemption under G.L. Ch. 59 §5(41) from a reverse mortgage annuity are not to be included as part of the applicant's gross receipts for property tax exemption purposes because they represent the taxpayer's equity in the home, not income.

94-301 (6/7/94)
Small Commercial Exemptions.
Eligibility of Sole Proprietorships and Home Businesses.
Eligibility of Mixed Use Parcels.
Parcels with Multiple Commercial Occupants.
Disclosure of Eligible Businesses to Selectmen.
Appeal of DET Determination of Eligibility or Assessors' Failure to Apply Exemption to Eligible Parcel.
Businesses eligible for the small commercial exemption under G.L. Ch. 59 §5I must have an average annual employment at all locations of no more than ten during the prior calendar year as determined by the department of employment and training (DET). Sole proprietors and partners are not considered employees by DET and, therefore, sole proprietorships or partnerships must have another person working for the business for a certain period of time during the prior year to be eligible. Eligible businesses operating out of homes will qualify for an exemption on any portion of the home, such as an office, basement, garage or other area, devoted to the operation of the business enterprise and classified as commercial property. For other mixed use properties, the exemption will be granted if the eligible business occupies a specific portion of the property devoted to commercial purposes and the valuation of the commercial portion does not exceed one million dollars. If more than one business occupies the commercial portion of the property, they must all be eligible businesses for the exemption to be granted. Access to the list of eligible businesses provided to the assessors by DET is limited by G.L. Ch. 151A §64A, and disclosure of the list to the selectmen is prohibited. Businesses do not have any right under G.L. Ch. 59 §5I or Ch. 151 §64A to appeal DET's determination not to include them on the list of eligible businesses. Nor does G.L. Ch. 59 §5I provide a procedure for taxpayers aggrieved by the failure of the assessors to apply the exemption to a parcel occupied a business that does appear on the list. In those cases, the assessors may request authority from the commissioner of revenue to abate under G.L. Ch. 58 §8 in order to put the exemption into effect. **Also see IGR 93-402, "Small Commercial Exemption" (December 1993).** Also found under **CLASSIFICATION AND TAXATION BY USE.**

94-304 (8/25/94)
Charitable Organizations.
Theatrical Company Facilities Used for Educational and Commercial Productions.
North Shore Music Theater.
A non-profit corporation organized to perform dramatic presentations may qualify as a charitable organization for purposes of a local tax exemption under G.L. Ch. 59 §5(3) where it produces musicals with the purpose of promoting and perpetuating that genre, presents annually a Shakespearean work aimed primarily for high school students and a series of productions from children's classic literature, supplements its student performances with teaching guides and other educational experiences and provides internships for academic credit for college students because these activities and presentations may properly be characterized as educational. However, to the extent the organization also offers a wide range and extensive number of celebrity performances that may be considered professional and commercial in nature, and provides ancillary non-charitable services such as a restaurant, its facilities may be taxable in part.

94-308 (5/2/94)
Religious Organizations.
Charitable Organizations.
Two-family Residences Occupied by Clergymen and Church Custodians.
A religious organization is not entitled to an exemption under G.L. Ch. 59 §5(11) for the portion of a two-family home it owns that is occupied by the church custodian. The portion occupied by the church's clergyman is exempt as a parsonage. Nor would the portion occupied by the custodian qualify for a charitable exemption under G.L. Ch. 59 §5(3) unless the property is used in association with some charitable purpose of the organization, the required filings (forms 3ABC and PC) are made, the custodian's occupancy on site is involuntary and essential to the charitable enterprise, and any rent paid by the custodian is a reasonable means of adjusting his compensation, not intended to generate income for the organization.

94-338 (4/28/94)
Personal Exemptions.
Trusts.
Beneficiaries of Nominee Trusts Without Legal Interests.
Recording of Trust Documents.
A person who holds no more than a beneficial interest in a nominee trust does not possess the owner-

ship interest required for a personal exemption. A nominee trust is a trust created for the purpose of holding legal title to property with trustees having only perfunctory duties and upon termination of the trust, the beneficiaries accede to title as tenants in common in proportion to their beneficial interests. Trust instruments filed in another state must be recorded at the applicable registry of deeds prior to the exemption qualification date (January first for a residential exemption under G.L. Ch. 59 §5C and July first for any personal exemption under G.L. Ch. 59 §5) for an exemption to be granted. **Also see 94-292 (5/10/94) (A husband and wife, whose domicile was conveyed to a nominee trust under which as co-trustees they hold legal title to the property and as co-trustees of a second personal residence trust they established they hold the beneficial interest in the property, are not eligible for a residential exemption under G.L. Ch. 59 §5C. While the trustees under a nominee trust have only perfunctory duties, a nominee trust is considered a trust for the purposes of the exemption statutes. Moreover, regardless of how extensive their beneficial interest in the property is under the personal residence trust, the couple does not have a legal life estate, and their decision to separate the legal and beneficial interest between the two trusts makes their ownership interest insufficient for an exemption); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

94-425 (5/17/94)
Deferrals.
Deferral of Taxes on Tax Title Properties.
A person who meets the qualifications for a property tax deferral under G.L. Ch. 59 §5(41A) may defer taxes even if his or her property is currently held in tax title. The deferred taxes should be certified into the existing tax title account, but interest on the deferred taxes will accrue at 8%, rather than 16%, until the property is sold or the deferring taxpayer dies. After the sale of the property or death of the taxpayer, the interest rate increases to 16%. In addition, a petition to foreclose the tax title cannot be filed by the treasurer for at least six months after the property is sold or the taxpayer dies. Also found under **COLLECTION PROCEDURES**.

94-486 (6/8/94)
Veterans.
Eligibility of Ex-Spouses.
A person who is divorced from a veteran is not eligible for an exemption under G.L. Ch. 59 §5(22)(d) because she is not the veteran's spouse.

94-488 (7/6/94)
Veterans.
Multi-unit Residential Properties of Paraplegic Veterans.
A paraplegic veteran who owns two, three-family houses situated on the same parcel may receive an exemption of only that portion that he occupies as his domicile. Veterans who qualify for exemption under G.L. Ch. 59 §5(22A) to (22E) and who own houses with more than one living unit are subject to the same limitation on the exemption amount. Since those exemptions apply to veterans with disabilities greater in severity than the minimum disability rating required for an exemption under G.L. Ch. 59 §5(22), it seems equitable that the same rule be applied to exemptions granted paraplegic veterans by the commissioner of revenue under G.L. Ch. 58 §8.

94-605 (7/11/94)
Elderly Persons.
Gross Receipts.
Imputed Rent.
Rental payments should not be imputed and included in the gross receipts of a taxpayer applying for an elderly exemption under G.L. Ch. 59 §5(41B) where the taxpayer's granddaughter, who is living in and maintaining the taxpayer's home while she is temporarily confined to a nursing home, does not actually pay rent.

94-670 (9/14/94)
Surviving Spouses/Minors.
Domiciles Owned by Surviving Spouses of Firefighters Killed in Line Duty as Joint Tenants with Adult Children.
A surviving spouse of a firefighter/police officer killed in the line of duty, who owns her domicile as a joint tenant with her adult daughter and son-in law, is entitled to an exemption under G.L. Ch. 59 §5(42) only to the extent of her interest in the property. In this case, she owns a one third interest, which means she would receive an exemption of one third of the full amount of the tax on the property.

94-673 (8/2/94)
Elderly Persons.
Gross Receipts.
Whole Estates
Garage and Land Leased for Business Purposes.
The value of a garage, and the portion of land, leased by an applicant for an elderly exemption under G.L. Ch. 59 §5(41B) to two individuals for the storage of business equipment is to be included in the taxpayer's whole estate because they produce income. In addition, the rental income is to be included in the taxpayer's gross receipts, but he may also deduct ordinary business expenses and losses.

94-684 (9/1/94)
Charitable Organizations.
Halfway Houses, Shelters and Rental Housing for Domestic Violence Victims/Recovering Substance Abusers.
Two properties owned by a chapter 180 corporation organized to provide housing and related services to low income, homeless and handicapped persons and engage in other charitable activities, one of which is used as a halfway house for men recovering from substance abuse and the other as a shelter for women and children who are the victims of domestic violence, are occupied by the organization and exempt from taxation under G.L. Ch. 59 §5(3). Shelters, group homes and half-way houses are generally considered to be occupied by the organization because the residents have a limited possessory interest in the property and enjoy little expectation of privacy. A third property owned by the organization and used to store items needed to operated its facilities and programs is also exempt, except that portion rented to a non-charitable organization. A

fourth property owned by the organization that contains individual rental units that are rented at below market rent to women who had previously resided at the shelter is taxable because it is occupied by the tenants, who have a full possessory interest in their units, not the organization.

94-704 (8/15/94)
Public Property.
Parking Lots at MDC Beaches Operated by Private Companies.
Real estate used as a parking lot for a metropolitan district commission (MDC) beach under a contract with a private company is exempt from taxation under G.L. Ch. 59 §5(2) even if the agreement is a lease for use of the property for private business purposes, rather than a management contract to operate a parking lot on behalf of the MDC. Under G.L. Ch. 59 §2B, publicly owned exempt property may be taxed if used in connection with a business conducted for profit, unless the use is "reasonably necessary" to the public purpose of a park. Here, although alternative means of transportation to the beach are available and other parking exists near the beach, the location of the beach, limited availability of other parking and the demand for parking space during the summer make the lot reasonably necessary to the recreational purposes of the beach, a park open to the general public. Also found under **PUBLIC PROPERTY**.

94-780 (6/15/95)
Charitable Organizations.
Hospital Foundation Properties Leased to Affiliated Non-profit Group Doctor Practices.
Filings.
Failure to Make Annual Filings.
Property owned by a foundation organized as a non-profit corporation for the exclusive benefit of a hospital and its affiliated facilities and leased to a group practice of doctors that is also organized as a non-profit corporation is not exempt from taxation under G.L. Ch. 59 §5(3) where the practice is not a health maintenance organization, nor operates a medical center or clinic for the benefit of the community at large, but simply appears to serve a limited number of private patients by appointment on the site. Moreover, while the ownership of the property by the foundation for the purpose of leasing it may serve a charitable purpose if it is for the benefit of the hospital and its related charities, to the extent that the foundation leases its holdings in any significant degree to noncharitable entities, as may be the case here, the leasing activity may not be charitable. Finally, even if both the owner foundation and lessee are charitable organizations, the failure of the owner foundation to timely file forms 3ABC and PC for a particular year bars any exemption for that year.

94-910 (11/14/94)
Public Property.
Airport Businesses.
Property leased by private commercial airlines at a city airport and used for passenger ticketing and waiting areas, baggage areas and other areas necessary to ticket, embark and disembark passengers and for the storage and maintenance of the airplanes is reasonably necessary to the operation of a public airport and is not taxable to the lessee under G.L. Ch. 59 §2B. However, areas leased to and used by businesses not related to airport operations, such as rental car agencies, gift/souvenir shops, car washes, pilot accessory stores, bars, restaurants and newsstands, would be taxable. **Also see 89-989 (5/18/90) (Areas at a public airport leased to and used by a business selling pilot accessories and equipment, such as maps and radios, is not necessary to the operation of the airport and is taxable to the lessor under G.L. Ch. 59 §2B. It is not enough for the commercial enterprise to be aeronautically related, nor of the rental revenues to be used to operate and maintain the airport. The use of the property by the lessee must be necessary to the operation of the facility).** Also found under **PUBLIC PROPERTY**.

94-997 (12/1/94)
Elderly Persons.
Gross Receipts.
Deduction of Nursing Home Expenses.
A married person applying for an elderly exemption under G.L. Ch. 59 §5(41C) may not deduct from the couple's gross receipts the amount of her husband's Social Security payments paid over directly to a nursing home to pay for his medical expenses. Personal expenses, such as those for medical care, may not be deducted from gross receipts in order to calculate eligibility for the exemption.

94-1022 (1/19/95)
Public Property.
Leased Properties Within U.S. Military Bases.
An office building known as South Laboratory under construction on property within Hanscom Air Force Base and under lease to the Massachusetts Institute of Technology (MIT) is exempt from taxation. The lessee MIT may not be assessed under G.L. Ch. 59 §2B, because at the time the United States acquired the land for a military reservation, Massachusetts law did not authorize the taxation of lessees of federal property. Any state jurisdiction retained over land ceded to the United States for military purposes is limited to those laws in effect at the time the land was ceded. While the commonwealth did retain taxing authority over Hanscom when it granted the property to the federal government, that retained authority only makes the laws existing at the time of the acquisition enforceable, not subsequent laws. Also found under **PUBLIC PROPERTY**.

94-1038 (1/23/95)
Personal Exemptions.
Effective Date of Locally Adopted Exemptions.
A municipality may accept one of the alternative exemption provisions for G.L. Ch. 59 §5(17) or (41), *i.e.*, G.L. Ch. 59 §5(17C), (17C½) or (17D) or G.L. Ch. 59 §5(41B) or (41C), at any time during a fiscal year and make it effective for that fiscal year. However, an alternative should not be adopted for a year after the tax rate for that year has been set, unless there are sufficient revenues in the overlay account to cover the anticipated cost.

94-1040 (1/25/95)
Economic Development Exemptions.
Use of Fixed Annual Inflation Factors in TIF Agreements.
An agreement entered into by a city or town under G.L. Ch. 40 §59 to implement a "tax increment financing" (TIF) exemption as an incentive for economic development may not fix the annual inflation factor to be applied to the "base value" of the property subject to the exemption at 5% per year. That factor must be calculated according to the formula set forth in the statute.

94-1082 (5/12/95)
Charitable Organizations.
Land Subject to Agricultural Restrictions and Leased to Farmers.
Land owned by charitable corporation organized for the protection of the environment and promotion of sustainable agricultural methods that is subject to an agricultural preservation restriction and leased to another non- profit corporation is not occupied by the charitable corporation for its purposes where the land is then subleased to farmers who reside in dwellings on the land and earn their living from the produce of the farms. As such, it is at best entitled to taxation on a value reduced by reason of its agricultural restriction. G.L. Ch. 132A §11D.

95-67 (1/26/95)
Personal Exemptions.
Multiple Exemptions for Same Person.
Multiple Exemptions for Co-Owners.
Deferrals.
Eligibility for Deferral and Personal Exemption.
A taxpayer may receive only one personal exemption on his or her domicile, with the exception of a Clause 18 hardship abatement and Clause 45 solar or wind power exemption. A property tax deferral under G.L. Ch. 59 §5(41A) is not a true exemption and may be used in conjunction with any personal exemption granted to the taxpayer. If two or more persons own and occupy the same domicile and each qualify under different exemptions, each taxpayer is entitled to his or her own exemption.

95-125 (5/22/95)
Charitable Organizations.
Housing for College Faculty.
Hotels and Conference Centers Operated by Colleges.
A 130 room hotel conference center owned by a private college that is not used for any educational purposes of the students would not be occupied by the college and eligible for exemption under G.L. Ch. 59 §5(3). Residential properties also owned by the college and used as housing for professors may qualify for exemption if they are contiguous to the main campus and the use is consistent with the organization's charitable purpose. The three tests applied would look to see whether the residency on campus is a condition of employment and essential to the success and efficiency of the educational organizational and any rent paid is a reasonable means of adjusting the faculty members' compensation, rather than a means to generate income for the organization.

95-130 (3/3/95)
Veterans.
Definitions of Wartime Service and Disability Sustained In the Line of Duty.
For a veteran to qualify for an exemption on the basis of a disability, the disability must have been sustained in "wartime service" and "in the line of duty". Under G.L. Ch. 4 §7(43), wartime service is defined as service performed during designated wars or campaigns, with specific dates defining the duration of that war or campaign for the purpose of determining wartime service status. The standard for determining whether the disability was sustained in the line of duty for military personnel is based upon state law of respondeat superior, which in Massachusetts means a consideration of all the circumstances related to the person's actions and whether they were in some broad way devoted to furthering the ends of the employment. In the case of a veteran, this would encompass the broad range of activities which may be reasonably necessary or appropriate to the performance of military service. In any case, however, determinations about whether a disability occurred in the line of duty are to be made for purposes of an exemption by the veteran's administration, or some branch of the military, and the assessors are to rely on that determination.

95-134 (2/17/95)
Deferrals.
Trusts.
Continued Deferral Where Properties Conveyed to Trusts.
Beneficiaries Without Legal Interest in Domicile.
Taxes deferred on a property under G.L. Ch. 59 §5(41A) are due and payable where the taxpayer conveyed it to a trust. Nor would the elderly taxpayer be eligible to defer taxes in the next fiscal year where she only has a beneficial interest in the property under the trust. To be considered an owner for exemption purposes, she must also have record legal title, *i.e.*, be one of the trustees. **Also see IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

95-171 (3/2/95)
Personal Exemptions.
Rescission of Exemptions.
The board of assessors may rescind a personal exemption granted to the executor of the estate of a blind person who had received an exemption in prior years where the executor had erroneously stated in the application that the blind person was both legally blind and the owner of the property on the July first qualification date, but she had in fact died before that time. **Also see 95-227 (4/4/95) (Where an applicant for a property tax exemption submits erroneous income information, the assessors may vote to rescind the exemption for the current fiscal year, but not retroactively for prior fiscal years. For those years the assessors should consult with town counsel in order to determine whether the omission may have been willful and knowing, or innocent only, as well as the materiality of any omission, and to explore the town's options including a demand for return of funds, legal action or no further action.**

95-173 (2/28/95)
Religious Organizations.
Retired Ministers Residences.
A single family home held in trust for a religious organization and occupied as the residence of a retired minister and his spouse is not exempt from taxation as a parsonage under G.L. Ch. 59 §5(11). A parsonage is the ministerial residence of a person who officiates at services at a house of religious worship. In this case, since the minister no longer officiates at such services, the property does not qualify as a parsonage.

95-188 (4/24/95)
Charitable Organizations.
Religious Organizations.
Former Parochial Schools Leased to Private, Non-profit Colleges.
Qualification of Religious Organizations as Charitable Organizations.
Property owned by a religious organization which was formerly used as a parochial high school and is now leased to a junior college organized as a non-profit organization under G.L. Ch. 180 is eligible for exemption under G.L. Ch. 59 §5(3) where the lessee occupies and uses the building for charitable purposes and the owner-lessor timely files a form 3ABC and a copy of its form PC annually. Religious organizations will generally also qualify as charitable organizations for purposes of G.L. Ch. 59 §5(3).

95-297 (5/10/95)
Charitable Organizations.
Occupancy of Open Space or Conservation Land Owned by Conservation Organizations.
Where the purpose of a charitable trust is to preserve open space, the property does not have to be actually occupied by a charitable entity in order to qualify for exempt status under G.L. Ch. 59 §5(3).

95-338 (5/10/95)
Veterans.
Completely Disabled Veterans Working as Local Veteran's Agents and for Own Businesses.
A veteran certified by the veteran's administration as 100% disabled who works for the town as its veteran's agent, and for a chain link fencing company he owns, is not "incapable of working" under G.L. Ch. 59 §5(22E) and is not entitled to an exemption under that section. A disabled veteran's capability for work is a separate determination to be made by the assessors, and a veteran who receives salary, wages or self-employment income as of the July first qualification date would not qualify.

95-356 (6/7/95)
Personal Exemptions.
Allocation of Exemptions and Refunds Between Buyers and Sellers for Properties Sold After July 1.
A person who qualifies for a personal exemption and who sells the property after the July first qualification date is entitled to the exemption. However, it is the parties to the sale, not town officials, who are obligated to allocate that benefit in such a way as to ensure it goes to the entitled individual. Where a refund is owed as a result of granting the exemption, the collector may issue it in the joint names of two parties, although it may be issued only in the name of the applicant for the exemption. Also found under **COLLECTION PROCEDURES**.

95-399 (8/11/95)
Public Property.
Properties Owned by Foreign Governments.
Property purchased by a foreign government for use as consular premises or the residence of the head of the consular post is exempt from local property taxes from the date the property is acquired under the Vienna Convention on Consular Relations to which the United States is a signatory. While the lien for any outstanding taxes assessed for the period prior to the acquisition is still valid, it cannot be enforced against the foreign government owning the property. Also found under **COLLECTION PROCEDURES; PUBLIC PROPERTY.**

95-479 (6/7/95)
Charitable Organizations.
Homeowners' Associations.
Beachfront property owned by an association of homeowners does not qualify for a charitable exemption under G.L. Ch. 59 §5(3) because the property is available only for the use of the homeowners, not the whole community or a large segment of the community. An organization is not charitable if it benefits only a limited group of persons rather than an indefinite class.

95-496 (5/19/95) (5/24/95)
Residential Improvements to House Older Persons.
Homeowners Eligible for Exemptions.
Eligibility for Other Exemptions.
Relationship to Zoning Laws.
Homeowners who make alterations or improvements in their residences to provide housing for a person at least sixty years old will qualify for an exemption under G.L. Ch. 59 §5(50) in any year in which a person of that age occupies the new or renovated space as his or her domicile as of July first. There is no requirement that the older person be provided with any type of personal services or care in addition to housing. Nor does the space have to be continuously occupied by the same person. The homeowners may make the space available to other older persons for housing and still qualify. However, the exemption does not apply to any owners of the property who did not originally make the improvements to the house. A property owner who qualifies for a clause 50 exemption and an elderly, survivors or veterans exemption, can only receive one exemption. Any relevant zoning or building regulations apply to a property being renovated to provide elderly housing, but qualification for the exemption is based solely on the criteria found in clause 50. The enforcement of zoning violations is the responsibility of officials other than the assessors.

95-519 (5/22/95)
Charitable Organizations.
Unoccupied Vacant Land in Residential Areas Owned by Colleges.
A small vacant parcel located in a residential area that is donated to a college is taxable, even though the parcel is owned by a charitable organization on July first, where the college does not actually occupy it for charitable purposes on that date and has not demonstrated an intent to occupy it for such purposes within two years of its acquisition.

95-540 (5/31/95)
Deferrals.
Trusts.
Approval of Deferral Agreements Where Domicile in Trust.
Where the domicile of an applicant for a tax deferral under G.L. Ch. 59 §5(41A) is subject to a trust, the deferral agreement between the applicant and the assessors must also be approved by all the trustees who hold legal title to the property under the terms of the trust, as well as any mortgagee. Under clause 41A , an applicant for deferral must enter into a written agreement also signed by "any joint owner or mortgagee" and where a property is held in trust, the trustees as holders of the legal title would be co-owners.

95-553 (6/19/95)
Charitable Organizations.
Defunct Hospitals.
A hospital facility owned by a charitable corporation that has discontinued all hospital admissions, emergency room services and inpatient services and has filed for bankruptcy is not exempt from taxation under G.L. Ch. 59 §5(3) because it is no longer occupied for charitable purposes, nor is the corporation continuing to function as a public charity.

95-623 (6/26/95)
Public Property.
Dining Halls and Medical Facilities Operated by Private Companies at State Correctional Facilities.
Portions of land owned by the commonwealth that are under control of the department of corrections for use as primarily as a correctional facility and are used by private companies under contract to the state to private certain services in the prison, such as a dining hall and health service, are not taxable to the private companies under G.L. Ch. 59 §2B because the areas are occupied by the prison, not the companies. The companies do not have a leasehold interest in the areas, nor do they have sufficient control or possession of the premises, to be considered the occupants. Also found under **PUBLIC PROPERTY**.

95-636 (7/11/95)
Charitable Organizations.
Hockey Arenas Located on Educational Institutions.
The use of a hockey arena located on the property of an educational institution by the institution's teams for league games, or by other teams within the institution's interscholastic league, does not affect the exempt status of the arena even if the institution charges for admission and retains all or part of the receipts. Other uses of the facility, by other exempt organizations, schools or the public at large, will also not affect its exempt status so long as any one of the following conditions apply: (1) the revenue received is less than $2,000 during the fiscal year; (2) the facility is not in direct competition with a similar facility located within the general area; (3) the use furthers a charitable purpose or services a basic public need, or (4) the user is organized and operated specifically for the purpose of providing low cost athletic facilities to the general public. 830 Code of Massachusetts Regulations 59.5.1. A presumption of no direct competition and, therefore, exempt status, exists if a similar facility is not located within ten miles, but the presumption may be rebutted by a competing business challenging the exemption under G.L. Ch. 59 §5B.

95-721 (7/21/95).
Religious Organizations.
Residential Rental Properties.
Property owned by a religious organization that abuts the property on which a church is located and that is improved by a single family house that has been leased by the organization to various tenants is not exempt from taxation under G.L. Ch. 59 §5(11) because it is not a church or parsonage, nor is it exempt under G.L. Ch. 59 §5(3) because even assuming the religious organization is also a charitable organization, the property is not occupied by the religious organization for its charitable purposes. Instead, the tenants are the occupants.

95-754 (10/5/95)
Public Property.
Municipal Properties Leased to U.S. Post Office.
A parcel of real estate owned by a town and formerly used as town hall that is now leased to the United States Postal Service is exempt from taxation because as an agency of the United States, the Postal Service is performing a public function on the site, not a business conducted for profit which would make it taxable under G.L. Ch. 59 §2B. Also found under **PUBLIC PROPERTY**.

95-807 (10/4/95)
Personal Exemptions.
Trusts.
Effect of Separate Use and Occupancy Agreements for Domiciles in Trust.
A couple who entered into a "Use and Occupancy Agreement" under which they have the right to occupy the domicile they transferred into an inter vivos trust they created until the date of the death of the survivor of them have a life estate in the premises where the agreement makes the couple responsible for maintenance, utility and insurance costs on the property, and, therefore, the husband, who is a qualifying veteran, is eligible for a personal exemption. The trust does not become effective until the life estate ends after the death of the survivor of the husband and wife.

95-936 (10/19/95)
Personal Exemptions.
Trusts.
Beneficiaries with Lifetime Right to Occupy But No Legal Interest in Domicile.
A person who places her domicile in an inter vivos trust, which requires the trustee to permit her to live in premises for as long as she desires, has a beneficial interest, not a life estate, in the property and because she named her son as the sole trustee of the trust, she does not qualify as an owner for personal exemption purposes. Unlike a life tenant, her interest is limited to inhabiting the property. She does not have the right to sell, lease or mortgage it as does a life tenant. **Also see 92-1022 (12/11/92) (A person who places her domicile in an inter vivos trust, names her son as sole trustee, and retains the right to live there for her lifetime, has only a beneficial interest in the property and does not meet the ownership requirements for a personal exemption under G.L. Ch. 59 §5(22). To be considered the owner for exemption purposes, the applicant must also have record legal title, *i.e.*, be one of the trustees); IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

95-942 (9/26/95)
Surviving Spouses/Minors.
Veterans.
Effect of Remarriage.
A person is not a surviving spouse of her first husband, where she remarried even though the second marriage ended in divorce and was later annulled under church law because the dissolution of the second marriage does not reinstate the first marriage. **Also see 93-572 (7/22/93) (A person who remarries after his or her spouse dies is not a "surviving spouse" for the purposes of a personal exemption under G.L. Ch. 59 §5(17D)).**

95-953 (10/10/95)
Religious Organizations.
Unoccupied Parsonages.
A house must be occupied by the minister as of the July first qualification date to enjoy the exemption provided under G.L. Ch. 59 §5(11) for parsonages, since a parsonage is the ministerial residence of someone who regularly officiates at services at a house of religious worship.

95-968 (10/10/95)
Charitable Organizations.
Assisted Living/Life-care Facilities.
Real estate owned by a non-profit corporation that operates an assisted living complex for older persons, including independent living units and assisted living units, does not qualify for a tax exemption under G.L. Ch. 59 §5(3) because the operation of such a facility for a limited group of persons may not be a charitable purpose, and even if it is, the property is not occupied by the corporation. The residents, who lease their living units, are the occupants of the residential units and common areas. If the organization occupies some portion of the facility for administrative or other charitable purposes, that limited portion may qualify for exemption. **Also see 92-167 (3/12/92); 92-1059 (12/17/92) (Real estate owned by a non-profit corporation that operates a life-care facility, including nursing care, for elderly persons does not qualify for a tax exemption under G.L. Ch. 59 §5(3) because the operation of such a facility for a limited group of persons may not be a charitable purpose and even if it is, the property is not occupied by the corporation. The residents, who pay substantial fees to enter the facility and to lease their living units, are the occupants of the residential units and common areas).**

95-1055 (11/1/95)
Blind Persons.
Eligibility of Blind Co-owners.
A husband and wife who are both legally blind and who own their residence as tenants by the entirety cannot both receive a blindness exemption under G.L. Ch. 59 §5(37). Where two or more persons qualify for the same exemption on the same property, only one of the co-owners may receive the exemption, unless the legislature has expressly provided otherwise, which is not the case here. The assessors should grant a full clause 37 exemption to one of the co-owners provided that the applicant's valuation amount of ownership is as great or greater than the valuation amount of the exemption, *i.e.*, $5,000. **Also see 92-1069 (12/29/92) (Only one of two blind persons who own and occupy the same domicile and qualify for the same exemption under G.L. Ch. 59 §5(37A) can receive the exemption).**

95-1120 (11/30/95)
Economic Development Exemptions.
Base Values for TIF Exemptions on Classified Farmland.
The base value for purposes of calculating a tax increment financing (TIF) exemption under G.L. Ch. 59 §5(51) of a parcel classified as farmland under G.L. Ch. 61A is its full and fair cash value, rather than its agricultural use value.

95-1162 (3/7/96)
Personal Exemptions.
Residential Exemptions.
Trusts.
Trustees With Right to Income/Principal.
A husband and wife who place their domicile in a trust under which both spouses are co-trustees and which provides for the payment of all trust income and principal to the spouses as they direct, except where they are incapable of managing their own affairs be reason of absence, illness or other cause, at which time payments are to be made to benefit the spouses, their children and descendants, have only legal title to the property and do not qualify for a residential exemption under G.L. Ch. 59 §5C. To be considered the owner for personal exemption purposes, the applicant must have record legal title, *i.e.*, be one of the trustees, and have a sufficient beneficial interest in the property. In this case, the couple has no rights or interests with regard to the domiciliary property under the trust, but rather possess only the right to receive income and principal. Such a right as it relates to the domicile is meaningless since the domicile is not of a nature to yield income. A distinct beneficial interest in the domicile itself must be retained to satisfy the requirement of a sufficient beneficial interest for exemption purposes. **Also see IGR No. 91-209 "Exemption Eligibility of Property Held in Trust" (July 1991).**

Farm Excise 18

Reserved.

89-269 (7/14/89)
Water Charges.
Sewer Charges.
Billing.
Collection.
Water and Sewer Charges Based on Estimated Use.
A municipality may bill water and sewer charges based on estimated rather than actual use every other billing period and, if those charges are not paid when due, may collect them in the same manner as those charges based on actual use. This includes imposing any interest and collection costs provided under current collection by-laws and policies, and adding the overdue charges, interest and costs to the tax on the property under G.L. Ch. 40 §42A-42F if accepted. Also found under **COLLECTION PROCEDURES; LIENS**.

90-886 (12/11/90)
Water Charges.
Sewer Charges.
Billing.
Collection.
Billing, Payment and Collection of Water and Sewer Charges.
The initial billing, payment and collection of water and sewer charges is governed by local policies, which may include acceptance of partial payments and the imposition of interest and late charges. These policies should be set forth in a by-law, and in the case of the interest rate, must be fixed by by-law at an amount that cannot exceed the rate applicable to delinquent property taxes. G.L. Ch. 40 §21E. If the municipality has accepted the provisions of G.L. Ch. 40 §§42A-42F and Ch. 83 §§16A-16F, and has recorded its acceptance at the registry of deeds, a lien will arise on the property supplied water and sewer service automatically by operation of law the day after any charge becomes overdue. Any unpaid charge, and interest and collection costs, for which a valid lien exists may then be added to the real estate tax on the property and if it remains unpaid, the property may be taken into tax title. If the unpaid charge is added to the tax of the next fiscal year after the lien arises, the lien is coterminous with the tax lien on the property. Otherwise, it terminates on October first of the third year after the charges becomes overdue. Other collection remedies available include a lawsuit against the person assessed the charge under G.L. Ch. 60 §35, set-off against monies owned to the person assessed under G.L. Ch. 60 §93, and denial, revocation or suspension of licenses and permits under G.L. Ch. 40 §57 if accepted. The town may also shut off water or sewer service to the property. G.L. Ch. 40 §42B; Ch. 83 §16B. **Also see 95-576 (6/23/95).** Also found under **COLLECTION PROCEDURES; LIENS**.

91-924 (3/18/92)
Sewer Charges.
Exemptions.
Sewer Service Provided to Charitable Organizations, Municipal Departments and Other Governmental Entities.
Rate Setting.
Cost of Service to Municipal Departments.
Charitable and other organizations, or governmental entities, exempt from property taxes are not exempt from user charges imposed by a municipality in the absence of specific legislation granting such an exemption. The municipality's own use of sewer service should be paid as a general fund subsidy in the rate setting process rather than by billing municipal departments for sewer service provided to properties under their control.

92-763 (10/29/92)
Light Charges.
Collection.
Delinquent Light Charges on Properties Located in Neighboring Municipalities.
Delinquent charges for utility service provided by a municipal utility department constitute liens on all parcels served, including those located in a neighboring municipality, if the utility has accepted G.L. Ch. 164 §§58B-58F and made the required filings. The assessors of the neighboring municipality must add any delinquent charges certified to them to the tax on the property, and once collected, the charges are to be turned over to the utility department. Also found under **COLLECTION PROCEDURES; LIENS; LIGHT PLANTS**.

92-965 (10/30/92)
Water Charges.
Collection.
Delinquent Charges for Installation and Testing of Backflow Devices.
Unpaid charges for the installation and testing of backflow protection devices in properties to ensure water safety and purity are part of the water service supplied to the property, constitute liens if the municipality has accepted G.L. Ch. 40 §§42A-42F and recorded its acceptance, and may be collected as part of the tax on the property. Also found under **COLLECTION PROCEDURES; LIENS**.

93-48 (1/27/93)
Manufactured/Mobile Home Park Fees.
Rate Setting.
Power to Increase Statutory Fee for Manufactured Home Licenses.
A municipality may, if it has accepted G.L. Ch. 40 §22F, increase the amount of a license, permit or certificate fee currently set by statute, such as the twelve dollar per month fee imposed by G.L. Ch. 140 §32G on each manufactured home occupying

space in a licensed manufactured housing community, to the extent the statutory amount does not fully cover the municipality's costs for issuing the license, permit or certificate. **Also see IGR No. 91-212 "Setting Municipal Fees" (October 1991).**

93-298 (4/14/93)
Demolition Charges.
Collection.
Collection of Unpaid Demolition Charges after Liens Expire.
A demolition charge imposed under G.L. Ch. 139A and Ch. 143 §9 to recover the cost of removing an abandoned and burned structure cannot be added to and collected as part of the real estate tax on the property after the lien has expired. A city or town collector may collect the charge by bringing a lawsuit against the person assessed the charge within six years of the due date or by having the treasurer withhold or set-off the charge against monies owed by the municipality to that person. G.L. Ch. 60 §§35 and 93. A city or town may also collect the charge by denying, revoking or suspending local licenses and permits of that person if it has accepted G.L. Ch. 40 §57 and adopted a by-law in accordance with its provisions. **Also see IGR No. 92-208 "Demolition Charges and Liens" (November 1992).** Also found under **COLLECTION PROCEDURES; LIENS.**

93-411 (7/20/93)
Solid Waste Disposal (Trash/Landfill) Fees.
Recovery of Costs for Landfill Cleanup/Closure and Debt Service on Solid Waste Disposal Facilities.
Rate Setting.
Rate Setting Body for Solid Waste Disposal Fees.
Solid Waste Reserve Fund for Debt Service/Cleanup/Closure Costs.
Trash fees in a community that has debt outstanding for the construction of solid waste disposal facilities, or has potential liability for the costs of closing and cleaning up landfills or other solid waste disposal facilities, are to be set at a level sufficient to pay the cost of such cleanup activities, as well as debt service costs attributable to the facilities, and to be deposited in a reserve fund under G.L. Ch. 44 §28C(f). The power to set the fees is vested in the selectmen, unless the authority is given to some other board or officer by charter or by-law. Monies in the fund may be appropriated only for operating and capital costs related to solid waste disposal, including debt service costs on solid waste disposal facilities and cleanup and closure costs. Also found under **SPECIAL FUNDS.**

93-421 (5/17/93)
Solid Waste Disposal (Trash/Landfill) Fees.
Collection.
Establishing Liens for Unpaid Solid Waste Disposal Fees.
An automatic lien arises for delinquent trash or solid waste disposal fees and charges imposed under G.L. Ch. 44 §28C(f) and such fees may be collected by adding them to the property tax bill if a city or town votes to impose a lien under that statute and records the acceptance at the registry of deeds. Alternatively, a city or town may establish a lien for trash fees by voting to impose a municipal charges lien for the fee under G.L. Ch. 40 §58. **Also see 93-147 (3/4/93); 91-830 (10/22/91); 95-576 (6/23/95) (To ensure the validity of liens for unpaid landfill charges imposed under G.L. Ch. 44 §28C(f), any town vote to impose the lien for such charges should specifically reference Ch. 44 §28C(f) and be recorded at the registry. The vote can be an acceptance of the statute or some other town meeting action stating that the outstanding charges will constitute liens under G.L. Ch. 44 §28C(f). If the vote does not specifically refer to the statute it could be construed as imposing the lien under G.L. Ch. 40 §58, which can be done, but the lien will not arise automatically when the charge becomes overdue).** Also found under **COLLECTION PROCEDURES; LIENS.**

93-870 (11/18/93)
Development Fees.
Impact Fees.
Fees on Proposed Development to Fund Infrastructure Improvements.
A municipality may not charge an "impact" fee on proposed new development and dedicate the revenue to a fund for various infrastructure improvements. Both proposed building permit fee increases based on the size of proposed new development, rather than the cost of issuing permits, and proposed betterments based on the size or valuation of the development, operate as illegal taxes on new development because they do not meet the legal standards for either a valid fee or special assessment. Moreover, even if a municipality could impose some sort of impact or development charge, any monies raised from the charge would be general revenue under G.L. Ch. 44 §53.

94-255 (6/1/94)
Sewer Charges.
Characteristics.
Rate Setting.
Sewer Connection Charges.
Funding of Expanded Sewer Treatment Plants by New or Expanded Sewer System Users.
A permanent privilege charge is a benefit assessment made under the taxing power, not a fee, and may be assessed by a municipality to recover the cost of improving its sewage treatment facilities under G.L. Ch. 83 §17. Since a treatment plant is a general benefit facility, any permanent privilege assessments, or sewer assessments made under G.L. Ch. 83 §§14, 15 and 15B, would probably have to be made on all current and potential system users, not just those seeking new or expanded sewer service. The method for computing the assessments would have to conform to the methods found in G.L. Ch. 83 §15 and each individual assessment would be limited to the amount of special benefits received by the property from the construction of the improvements. As a benefit assessment, any permanent privilege assessment would not be a personal liability of the property owner, but would be a lien on the land, which means the recording requirements of G.L. Ch. 83 §27 would have to be complied with in order to enforce collection. Alternatively, a "connection" fee may be imposed on property owners seeking new or expanded sewer service to fund the plant improvements if the improvements are needed to accommodate the new or expanded service, but not if the improvements also generally upgraded the plant

and extended its useful life in a way that benefited all customers. In addition, a connection fee could probably be imposed only if property owners are not required by state or local health and safety codes to connect to the sewer system. If sewer connections are mandatory, a benefit assessment, not a fee, would probably have to be imposed. Finally, any connection fee must be based on reasonable projections about the cost of the plant improvements, not speculative estimates about the cost at some unspecified number of years in the future. Also found under **BETTERMENTS AND SPECIAL ASSESSMENTS**.

94-578 (10/21/94)
Deferrals.
Relationship between User Charge Deferrals and Property Tax Deferrals for Senior Citizens.
There is a close and direct relationship between eligibility for and administration of the senior citizen water and sewer user charge deferral under G.L. Ch. 40 §42J and Ch. 83 16G and the property tax deferral under G.L. Ch. 59 §5(41A). Only senior citizens receiving a clause 41A deferral may defer water and sewer user charges and the deferred charges are secured by the same lien statement as deferred taxes. No additional or separate deferral and recovery agreement of lien statement need be executed or recorded. The senior citizen betterment and special assessment deferral, however, is administered separately from the clause 41A deferral. Senior citizens must meet the same criteria as to age, ownership, domicile, residency and gross receipts as a recipient of a clause 41A deferral, but they do not have to be actually receiving one to obtain a betterment and special assessment deferral. A separate deferral and recovery agreement and lien statement must be executed and recorded. Also found under **BETTERMENTS AND SPECIAL ASSESSMENTS**.

94-866 (5/24/95)
Power to Impose.
Abatement Application Filing Fees.
A fee may not be imposed for filing an application for an abatement with a local board of assessors in the absence of express statutory authority, and G.L. Ch. 40 §22F does not grant that authority. The abatement procedure is an integral part of fixing a taxpayer's property tax liability for the year, and the imposition of any conditions governing the recourse of a taxpayer to the abatement remedy, including the payment of any filing fees, is an exercise of the power to tax, which is reserved exclusively to the legislature under the Home Rule Amendment. Consequently, any filing fee for initiating the abatement process before the assessors must be expressly authorized by statute. Neither the language, nor purpose, of G.L. Ch. 40 §22F indicates it was intended by the legislature to grant cities and towns such authority. By its language, it applies to regulatory fees paid by an individual or entity for receipt of privileges such as licenses, permits or certificates under a regulatory scheme related to public health, safety or welfare, as well as to user fees charged for a particular municipal service. A taxpayer who seeks an abatement of a local property tax is not obtaining a privilege or service from a municipal board or officer as is contemplated by the statute. Moreover, the primary purpose of the statute seems to have been to facilitate the periodic updating of fee schedules to reflect changes in the local cost of administering regulatory activities or providing particular services, rather than to grant cities and towns additional powers with respect to the types of fees they may impose. Also found under **ABATEMENTS AND APPEALS**.

94-925 (12/2/94)
Sewer Charges.
Water Charges.
Abatements.
Charges Redetermined by Bankruptcy Court.
Assessors may abate as necessary to put into effect a bankruptcy court order establishing a taxpayer's water and sewer obligations, as well as property tax liability, and setting out a schedule of installments and interest rates at which the payments are to be made. Also found under **COLLECTION PROCEDURES**.

95-156 (5/15/95)
Ambulance Service Fees.
Collection.
Use of Collection Agencies to Collect Ambulance Fees.
A town collector may not engage the services of a collection agency to collect outstanding ambulance service fees and permit the agency to retain a portion of the collections, without an appropriation, as compensation for its services. The collector's authority to enter into such arrangements under G.L. Ch. 60 §2B is limited to outstanding local taxes, except real estate taxes. Also found under **COLLECTION PROCEDURES**.

95-403 (4/24/95)
Water Charges.
Sewer Charges.
Abatements.
Abatement of Water/Sewer Charges Added to Taxes.
A water or sewer charge added to a real estate tax can only be abated by the board of water/sewer commissioners (or department) if (1) the property owner filed an application for abatement of the charge with the board within the same 30 day deadline as the abatement application for the tax to which the charge was added, (2) the board has received authority from the commissioner of revenue to abate under G.L. Ch. 58 §8, or (3) a special act of the legislature authorizes the abatement. If an abatement is granted, the board must notify the assessors, collector and accounting officer and issue an abatement certificate to the property owner. The assessors may actually prepare the certificate, but it is to be issued by the board or department head who granted the abatement. Also found under **LIENS**.

95-429 (5/3/95)
Water Charges.
Sewer Charges.
Collection.
Imposition and Collection of Demand Charges and Interest on Unpaid Water/Sewer Charges Before Addition to Taxes.
Prior to the addition of delinquent water/sewer charges to a tax bill, the collection of such charges is governed by local rules, regulations, by-laws, ordi-

nances or votes. The water and sewer commissioners may establish a late payment policy that would include charging ratepayers issued a notice of outstanding charges a reasonable fee (a "late" or "demand" charge) to cover the associated costs. They may do so without town meeting action, but to the extent town meeting does establish a policy they must follow it. However, any interest on unpaid water or sewer charges prior to addition to a tax must be fixed by by-law. Also found under **COLLECTION PROCEDURES**.

95-495 (5/24/95)
Water Charges.
Sewer Charges.
Collection.
Outstanding Condominium Association Water/Sewer Charges Erroneously Added to Taxes on Developer's Unit.
Delinquent water and sewer charges assessed to a condominium association, but erroneously added to the fiscal year 1994 real estate tax of the only unit still owned by the developer, should be allocated by the assessors to the other units in proportion to their share of the undivided interest in the common areas and facilities, and then reassessed as part of the FY94 tax. If a lien cannot be added to the tax on a particular unit because a clean municipal lien certificate was recorded on that unit in the meantime, the association would still be personally liable for those charges and depending on the age of the charges, the collector may be able to bring a lawsuit to collect. If any amounts are uncollectible because of the inability to enforce a lien or bring a lawsuit, a request for authority to abate under G.L. Ch. 58 §8 may be submitted to the commissioner of revenue. Also found under **COLLECTION PROCEDURES; LIENS**.

95-583 (6/30/95) (7/17/95)
Water Charges.
Sewer Charges.
Abatements.
Abatement of Unpaid Water/Sewer Charges Before and After Addition to Taxes.
Abatement of Paid Water/Sewer Charges.
Assessors' Power to Abate Water/Sewer Charges.
Assessors do not have the power to abate any water and sewer charges, including those that are overdue, constitute a lien and have been added to a tax for collection purposes. Any power to abate those charges rests with the board or officer that imposed them. If they have been added to a tax, such board or officer may abate if the property owner files an application for abatement within the same time frame as he may apply for an abatement to the assessors of the tax to which the charge was added. Basically, the same procedures and deadlines that apply to property tax abatements and appeals apply. The general laws are otherwise silent on the procedure for abating other disputed water and sewer charges, whether paid or unpaid. Towns may by by-law adopt appropriate procedures for customers to use in seeking corrected charges so long as they are not inconsistent with the general laws on the procedures for those charges added to a tax. A customer who has been overbilled and has paid the charge may also be able to bring a civil action to recover the overpayment, especially where the overcharge was caused by a faulty meter. **Also see 91-924 (3/18/92) (The sewer commissioners (or other board or officer in charge of the sewer department) may abate unpaid sewer charges constituting a lien on the property if the municipality has accepted G.L. Ch. 83 §§16A-16F and the property owner had applied for an abatement to the commissioners within the time set forth in G.L. Ch. 83 §16E. However, disputed charges that have been paid could only be abated as authorized by by-law or ordinance).**

95-752 (8/4/95)
Water Charges.
Exemptions.
Waiver of Charges for Selected Developments to Encourage Development.
The board of water commissioners may not waive water hook-up fees to selected developers and property owners in order to encourage development in the town unless it is permitted by statute to provide favorable treatment to that particular class of users. The statutory "just and equitable" charges standard used in the general laws, and the special act that applies to the town, requires non-discriminatory treatment of customers receiving the same service, and unless there are some cost economies to the town that could be the basis for different treatment of selected customers, the town cannot depart from that standard without express legislative authorization.

95-885 (8/30/95)
Water Charges.
Rate Setting.
Recovery of Interest Costs in Water Charges.
A municipality may recover in its water user charges the interest cost on bond anticipation notes issued for water improvement projects under G.L. Ch. 41 §69B even if the town funded the debt service costs in its budget from an appropriation from the tax levy. The municipality's rate setting powers are tied to the water department's total costs, rather than the form of the appropriation vote.

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92-70 (1/30/92)
Payrolls.
Payment of Raises Under New Collective Bargaining Agreements from "Contract Reserve" Funds.
A town meeting vote is required to transfer funds from an appropriation for anticipated wage increases and/or expense budget costs associated with collective bargaining agreements to be negotiated during the year to the appropriate departmental salary and expense items before any increased wages or other contract costs may be paid. Also found under **APPROPRIATIONS**.

92-461 (5/19/92)
Disbursement Procedures.
Treasury Warrants.
Delegation of Selectmen's Power to Approve Treasury Warrants.
The power of the board of selectmen to approve warrants for payments from the treasury under G.L. Ch. 41 §56 cannot be delegated by the board by vote or the town by vote or by-law. **Also see 92-721 (10/23/92) (The board of selectmen cannot delegate its power to approve warrants for payments from the treasury under G.L. Ch. 41 §56 to the executive secretary).** Also found under **HOME RULE; TOWN MEETINGS**.

92-477 (5/26/92)
Facsimile Signatures.
Payroll/Expense Vouchers.
Actual signatures are required on payroll and expense vouchers, and other documents, approved by the assessors in the day to day operation of their office. The use of facsimile signatures of local officers is limited to those purposes permitted by statute.

92-624 (8/28/92)
Payrolls.
53 Pay Periods Overlapping Fiscal Year.
Where a municipality pays its employees weekly, there are 53 paydays during the fiscal year and the first or last pay period overlaps a fiscal year, payroll payments should be attributed to the budgets of the appropriate fiscal year in proportion to the time worked in the year by computing employees' compensation on a per diem rather than weekly basis.

92-695 (8/19/92)
Bank Accounts/Services.
Bank Accounts for Funds Received by School Principals.
Funds received by a school principal in his official capacity must be turned over to the municipal or regional school district treasurer under G.L. Ch. 41 §35 and Ch. 71 §16A and may not be deposited in a separate bank account maintained by the principal. **Also see 92-379 (5/4/92).** Also found under **SCHOOLS**.

92-1005 (12/3/92)
Amounts Raised Without Appropriation.
Spending Without Appropriation.
Court Judgments.
Payment of MCAD Awards.
Settlements.
Power of Officers to Settle Litigation.
An award of the Massachusetts commission against discrimination (MCAD) cannot be paid and raised in the tax rate without appropriation under G.L. Ch. 44 §31 and Ch. 59 §23, because the only awards of an administrative body that may be funded in that manner are those of the industrial accident board. Town officers do not have general authority to settle litigation brought against the town in the absence of an appropriation for a settlement of claims account or a vote of town meeting approving the settlement.

92-1012 (11/24/92)
Encumbrances.
Year End Encumbrances for School Department Purchases of Next Year's Goods and Services.
School committees may encumber funds from their annual operating appropriation at the end of the fiscal year to pay for goods or services intended for use in the next fiscal year only if a binding contractual commitment, such as a purchase order, accepted bid or signed contract, is made by June thirtieth. G.L. Ch. 40 §56; Ch. 71 §49A. Also found under **SCHOOLS**.

92-1066 (1/4/93)
Amounts Raised Without Appropriation.
Spending Without Appropriation.
Court Judgments.
Payment of Arbitration Awards.
An arbitration award is not a court judgment and cannot be paid and raised in the tax rate without appropriation under G.L. 59 §23, nor financed by borrowing under G.L. Ch. 44 §7(11). Also found under **BORROWING**.

93-176 (3/10/93)
Vendors.
Multi-year Trash Collection Contracts.
A municipality may not make a binding multi-year contract with a vendor for trash collection in the absence of an appropriation, G.L. Ch. 44 §31, because municipalities do not have general authority, apart from that contained in the Uniform Procurement Act, G.L. Ch. 30B §12, to enter into binding multi-year contracts subject to annual appropriation, and contracts for trash collection and other solid waste disposal services are not subject to the act. Also found under **PROCUREMENT**.

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93-896 (12/6/93)
Amounts Raised Without Appropriation.
Spending Without Appropriation.
Treasurer's Expenses for Tax Title Foreclosures.
A treasurer may spend funds raised without appropriation under G.L. Ch. 60 §50B only for the direct and necessary court fees and costs associated with the tax title foreclosure process in land court, such as filing fees, examiner's costs, certified mailings, publication costs, etc. Any supporting and associated expenditures, such as contracts with firms or banks to assist tax title collections, computer software or additional office staff must be provided for in the regular budget and appropriation process. Also found under **COLLECTION PROCEDURES**.

93-983 (2/7/94)
Bills.
Payrolls.
Vendors.
Effect of 1993 Education Reform Act on Approval of School Department Vendor Bills and Payrolls.
The school committee remains the head of the school department for purposes of approving bills and payrolls under G.L. Ch. 41 §§41 and 56 after the passage of the 1993 Education Reform Act because the new contracting and appointing powers given to the superintendent and principals under the act are subject to personnel policies and budgetary restrictions established by the committee. Therefore, the committee must still approve, by signature of a majority of its members, all bill schedules for purchases of goods and services. It must also swear to the payroll, and may do so by designating one of its members to make oath to it. In those instances where the superintendent and principal have authority to incur particular expenses or appoint particular employees under the Education Reform Act, they should also approve those bills or swear to the payrolls of those employees. **Also see 94-545 (6/22/94) (Discusses impact of Education Reform Act on approval of bills and payrolls in regional school district and school union. The approval of the regional school committee is still required under G.L. Ch. 71 §16A).** Also found under **SCHOOLS**.

94-122 (3/22/94)
Deficits.
Amounts Raised Without Appropriation.
Spending Without Appropriation.
Group Health Insurance Deficits.
A municipality's share of group health insurance costs must be raised in the tax rate if the appropriation made for that purpose is insufficient. G.L. Ch. 32B §3. The employee's share of the deficit should be recovered from the employees by increasing the total premium and as a result, the employee's proportionate share. G.L. Ch. 32B §3A. The deficit may also be eliminated by an appropriation or transfer from available funds, including a reserve fund transfer if the additional expenses are extraordinary or unforeseen, but the municipality is not required to exhaust all available funds and reserves in order to cover it. Also found under **SPECIAL FUNDS**.

94-833 (11/30/94)
Spending Without Appropriation.
Special Needs Programs.
School committees do not have the power to spend for special needs purposes above the amount of their appropriation. Unanticipated increases in special needs program costs must be accommodated within the school committee's budget just as unanticipated increases in other educational costs such as the price of textbooks or utility bills. Also found under **SCHOOLS**.

95-165 (3/22/95)
Bills.
Disbursement Procedures.
Accountant's Role in Approving Light Plant Bills.
Recovery of Unlawful, Fraudulent or Excessive Expenditures.
Payment of Light Plant Manager's Personal Attorney's Fees in Suit Against Individual Selectmen.
A town accountant has authority under G.L. Ch. 164 §56 and G.L. Ch. 41 §56 to disapprove light department bills as unlawful, fraudulent or excessive. Town meeting may authorize the board of selectmen, accountant or other officer to bring an action for money had and received to recover amounts paid for light department expenses which are not lawful, were fraudulently obtained or in excess of appropriation, if such authority is not otherwise provided by by-law or charter. In addition, the town may be able recover certain unlawful payments under G.L. Ch. 268A §21; G.L. Ch. 164 §69. Also discusses whether the light plant could incur expense of the light plant manager for personal attorney's fees incurred in a suit against an individual selectmen for defamation. Also found under **LIGHT PLANTS**.

95-228 (4/18/95)
Credit Cards.
Teleprocessing Fees for Motor Vehicle Excises Paid by Credit Cards.
A $2.95 teleprocessing fee added to the motor vehicle excise bill of those taxpayers electing to pay their bill by credit card over the telephone cannot be retained by the company that makes the service available to cities and towns as compensation for that service. All fees must be paid over to the communities, along with the excises, and any compensation for the service would have to paid through an appropriation in the collector's regular expense budget, or for these particular contractual services. If budgeting is difficult due to inability to estimate the number of people who may pay by credit card, a municipality may establish a revolving fund under G.L. Ch. 44 §53E½ to which the teleprocessing fees may be credited and from which the company may be paid upon proper billing. Also found under **ACCOUNTING POLICIES AND PROCEDURES; SPECIAL FUNDS**.

95-282 (3/11/95)
Certifications.
Certification of Appropriations for Construction Contracts Before Actual Borrowing.
An appropriation and authorization to borrow are sufficient for the auditor or accountant to certify that an appropriation in the amount of a construction

contract is available under G.L. Ch. 44 §31C. An actual borrowing is not required as of the time of certification.

95-285 (5/10/95)
Payrolls.
Payroll Deductions for Individual Charities.
The treasurer is not required, nor permitted, to make payroll deductions for individual charities at the request of employees without a special act of the legislature. However, under G.L. Ch. 180 §17B, if the charity is associated with a community chest or united fund, the employee probably could designate the specific charity for receipt of any deduction from such charitable fund contribution by the employee.

95-299 (6/27/95)
Payrolls.
Monthly Pay Periods.
Salaried municipal employees paid monthly may not receive pay in advance of the end of the pay period under G.L. Ch. 41 §§52 and 56, but they must receive payment no later than six or seven days after the end of the pay period under G.L. Ch. 149 §148. City and town employees may now be paid biweekly, but the employee, not the municipality, has the option of requesting a monthly pay period. **For an official opinion on this issue, local officials should contact the Office of the Attorney General, Fair Labor and Business Practices Division, since it is responsible for the enforcement of G.L. Ch. 149 §148.**

95-358 (5/2/95)
Disbursement Procedures.
Property Tax Refunds Authorized by Appropriating Bodies.
Town meeting may not appropriate funds to effect a property tax abatement and refund to a taxpayer who did not timely file for the abatement. Any such action would constitute a gratuity since the taxpayer has no legal claim or right to the refund and a gratuity to a private individual is not a permissible use of public funds. Moreover, even if town meeting appropriated the funds, neither the town accountant, nor board of selectmen, may approve payment for such an expenditure under G.L. Ch. 41 §56. Also found under **APPROPRIATIONS.**

95-369 (4/21/95)
Officers' Fees.
Financial Reports.
Reporting Requirements for Fees Retained by Officers.
A town clerk is not required to make any formal report and accounting of fees received by virtue of office to the selectmen or accounting officer in the absence of a by-law enacted under G.L. Ch. 40 §21(13) requiring such a report. However, any payment records in the clerk's office would be public and open to inspection by town officers.

95-400 (5/5/95)
Gifts/Grants.
Approval of Grant Expenditures by Town Managers.
Where a town charter gives the town manager the power to approve treasury warrants, rather than the selectmen as provided by G.L. Ch. 41 §56, the selectmen must still approve the expenditure of gifts and grants made to any town officer or department, except the school department, under G.L. Ch. 44 §53A. The purposes of the statutes are different. Under G.L. Ch. 44 §53A, the selectmen's approval provides spending authority, in the same way an appropriation would. The selectmen's role under G.L. Ch. 41 §56, however, is to provide oversight of actual spending by ensuring all bills are proper before any disbursement from the treasury is made. The selectmen's approval of spending authority under G.L. Ch. 44 §53A may be as broad or narrow as they feel is appropriate for the project or program being funded by the grant.

95-670 (8/21/95)
Payrolls.
Payment of Compensation of School Administrators/Employees in Advance of Service.
Individual school administrator contracts and collective bargaining agreements requiring 26 equal installment payments of compensation could not require payment of wages in advance of service being performed in any pay period under G.L. Ch. 41 §§41 and 56. The school compensation statute, G.L. Ch. 71 §40, authorizing equal payments of compensation over summer months allows delayed compensation, but not advance compensation. Collective bargaining agreements could not supersede the statutes allowing payments only when services have already been rendered. Also found under **LOCAL OFFICIALS AND EMPLOYEES.**

95-886 (9/8/95)
Payrolls.
Payment of Salaries for Required Officers Inadvertently Omitted from Annual Budget from Other Departments' Budgets.
An animal inspector appointed by the board of selectmen and paid from the selectmen's budget for the previous two years could not be paid from the police budget because the inspector's compensation was inadvertently omitted from the selectmen's budget. However, a reserve fund transfer would be permissible to pay this $1600 annual salary during the interim period prior to appropriation at special town meeting, because the position was required, compensation is mandated by G.L. Ch. 129 §17 and services had already been performed. No payment from the police wage account could be made without the police chief's approval under G.L. Ch. 41 §41, as the department head. Also found under **LOCAL OFFICIALS AND EMPLOYEES; SPECIAL FUNDS.**

95-1145 (12/26/95)
Officers' Fees.
Retention of Demand Fees by Tax Collectors.
A tax collector may retain demand fees collected from delinquent taxpayers after their properties have been placed in tax title, as well as before, under G.L. Ch. 60 §55, except where the municipality has adopted a by-law requiring municipal officers to pay their fees into the treasury. **Also see 92-464 (6/30/92) (A tax collector may retain statutory collection fees established by G.L. Ch. 60 §15 as compensation unless the municipality has adopted a by-law requiring officers to pay their fees into the treasury).** Also found under **LOCAL OFFICIALS AND EMPLOYEES.**

95-1182 (12/26/95)
Bank AccountsServices.
Gifts/Grants.
Separate Accounts for Grants Received by Municipal Departments.
Title to grant funds received by a municipal department is in the municipality, not the department because it is not a separate legal entity, and the treasurer, who has custody of the funds need not place them in a separate bank account, unless the terms of the grant expressly require a separate account.

92-366 (5/19/92)
Withdrawal Taxes.
Land Removed from Forest Classification and Transferred to Agricultural or Recreational Classification.
A withdrawal tax must be assessed when land classified as forest land under G.L. Ch. 61 is removed from classification under that chapter and is transferred to agricultural (or recreational) land classification. Under Ch. 61, a penalty tax assessment is triggered by a change in "classified" status, rather than a change in the use of the land. **Also see 91-1102 (1/13/92); 92-557 (6/29/92); 94-1009 (2/13/95) (Discusses effect of appellate tax board decision).**

92-671 (10/16/92)
Forester's Certifications.
Management Plans.
Effect of Amended Management Plans for Added Acreage on Classification Period.
The period of a parcel's classification as forest land under G.L. Ch. 61 is not extended by an amendment to the forest management plan that adds acreage. The original term remains on the parcel, as increased by the new acreage.

92-1058 (1/15/93)
Land Taxes.
Withdrawal Taxes.
Management Plans
Exemption from Taxation of Classified Forest Land Owned by Conservation Organizations and Subject to Approved Management Plans.
Land classified as forest land under Ch. 61 and subject to an approved forest management plan is exempt from taxation under both G.L. Ch. 59 and Ch. 61 where it is owned by a conservation organization that qualifies as a tax exempt charitable organization under G.L. Ch. 59 §5(3) and is held and managed for restoration and conservation purposes consistent with the approved plan. The organization will not be subject to a withdrawal penalty tax simply by qualifying for the exemption. The organization should apply for exempt status by filing form 1-B-3 (or an abatement application) and must file form 3ABC annually, with a copy of the PC form filed with the attorney general's public charities division. Also found under **EXEMPTIONS**.

93-539 (8/23/93)
Withdrawal Taxes.
Classified Forest Land Acquired by Conservation Organizations for Conservation and Recreational Use.
A conservation organization that acquires land classified as forest land under Ch. 61 with the intent of maintaining it as open land for conservation and recreational purposes, but does not intend to retain the certification of the state forester and manage the land under an approved forest management plan, is subject to the withdrawal penalty tax under G.L. Ch. 61 §7 because the land would no longer be classified, and it is a withdrawal from classification that triggers assessment of the tax.

94-1070 (1/6/95)
Withdrawal Taxes.
Exemption of Classified Forest Land Acquired by Municipalities.
A municipality that acquires classified forest land by gift or purchase while the classification remains in effect would be the owner of the property, not the prior owners, at the time of withdrawal from classification for penalty tax purposes under G.L. Ch. 61 §7. However, since publicly owned property is generally exempt from taxation and a governmental unit cannot assess a tax upon itself, no penalty tax would be assessed and the Ch. 61 lien should be released by the assessors. While the prior owner would not be liable for a withdrawal tax, he would remain personally liable for any unpaid land or forest product taxes assessed in his name.

95-616 (6/21/95)
Withdrawal Taxes.
Calculation of Withdrawal Taxes Where Land Removed from Classification One Year Into First Classification Period.
The withdrawal tax on land classified as forest land under G.L. Ch. 61 for only one year prior to its withdrawal is based on the difference between the full value taxes that would have been assessed upon the land and the reduced taxes assessed under G.L. Ch. 61, without any credit for products taxes paid, for the one year for which classified land values were used. The alternative five year recovery provided in G.L. Ch. 61 §7 applies only where the land has completed an initial 10 year classification period.

95-872 (9/18/95)
Withdrawal Taxes.
Management Plans.
Land Acquired by DEM for Forest Use.
Land classified as forest land under Ch. 61 that is purchased by the state department of environmental management (DEM) is not subject to a withdrawal penalty tax if DEM modifies the approved forestry management plan on the parcel to change the name to DEM and continues the forestry use.

Home Rule

92-308 (7/6/92)
By-laws/Ordinances.
Quantum Required to Appropriate from Stabilization Fund.
A proposed by-law that makes the use of the stabilization fund for operating purposes subject to a four-fifths vote of town meeting, rather than the two-thirds vote established by G.L. Ch. 40 §5B, is a substantive change that conflicts with the general laws and is impermissible under the Home Rule Amendment.

92-353 (4/23/92)
Powers.
Establishment of Property Tax Credits for Taxpayers Deleading Properties.
A city or town may not establish by by-law or ordinance a property tax credit for taxpayers who incur costs in complying with orders of public health officials to delead their properties because the Home Rule Amendment specifically prohibits municipalities from exercising any power relating to the levy, assessment or collection of taxes.

92-461 (5/19/92)
By-laws/Ordinances.
Delegation of Selectmen's Power to Approve Treasury Warrants.
The power of the board of selectmen to approve warrants for payments from the treasury under G.L. Ch. 41 §56 cannot be delegated by the board by vote or the town by vote or by-law. **Also see 92-721 (10/23/92) (The board of selectmen cannot delegate its power to approve warrants for payments from the treasury under G.L. Ch. 41 §56 to the executive secretary).** Also found under **FINANCIAL MANAGEMENT; TOWN MEETINGS.**

94-333 (5/9/94)
Powers.
District By-laws Indemnifying Firefighters.
A special purpose district meeting may not enact a by-law permitting the district to indemnify any of its firefighters, who accidentally become disabled, for medical and other costs relating to the disabilities, nor appropriate monies for indemnification purposes, because districts do not have the power granted cities and towns under the Home Rule Amendment to exercise by by-law any power or function the legislature could confer on them. To establish an indemnification fund, a district's enabling legislation would have to be amended by the legislature. Also found under **DISTRICTS.**

95-568 (7/7/95)
By-law/Ordinances.
Permanent Departmental Revolving Funds.
A by-law establishing a permanent departmental revolving fund from beach vehicle sticker fees and limiting annual expenditures from the fund to the amount of revenue collected is inconsistent with G.L. Ch. 44 §53E½, which requires an annual vote authorizing the fund and fixing a specific, not variable, dollar limitation on expenditures, subject to modification by the board of selectmen and finance committee. The portion of the by-law authorizing the use of revolving fund monies for hiring and training of beach personnel is not inconsistent per se with the statute's restrictions on the use of those monies to pay full-time personnel since it does not expressly prohibit also using the fund to pay for the fringe benefits of any such personnel. Also found under **SPECIAL FUNDS.**

95-688 (7/25/95)
By-laws/Ordinances.
Earmarking of Wetlands Protection Consultant Fees.
Consultant fees charged by the conservation commission to applicants seeking permits under the wetlands protection act, G.L. Ch. 131 §30, in order to pay for the reasonable expenses of engaging experts to assist the commission review the application, are general fund revenue under G.L. Ch. 44 §53 and cannot be dedicated by by-law to a special fund to be spent by the commission without appropriation for the necessary services, with the balance to be returned to the applicant, because the authority under G.L. Ch. 44 §53G for such consultants' funds does not apply to the conservation commission and there is no other statutory authority for such a fund. Also found under **ACCOUNTING POLICIES AND PROCEDURES; SPECIAL FUNDS.**

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Liens

89-269 (7/14/89)
Water Liens.
Sewer Liens.
Liens for Unpaid Estimated Water/Sewer Charges.
A municipality may bill water and sewer charges based on estimated rather than actual use every other billing period and, if those charges are not paid when due, may collect them in the same manner as those charges based on actual use. This includes imposing any interest and collection costs provided under current collection by-laws and policies, and adding the overdue charges, interest and costs to the tax on the property under G.L. Ch. 40 §42A-42F if accepted. Also found under **COLLECTION PROCEDURES; FEES AND CHARGES.**

90-886 (12/11/90)
Water Liens.
Sewer Liens.
Duration of Water/Sewer Liens.
The initial billing, payment and collection of water and sewer charges is governed by local policies, which may include acceptance of partial payments and the imposition of interest and late charges. These policies should be set forth in a by-law, and in the case of the interest rate, must be fixed by by-law at an amount that cannot exceed the rate applicable to delinquent property taxes. G.L. Ch. 40 §21E. If the municipality has accepted the provisions of G.L. Ch. 40 §§42A-42F and Ch. 83 §§16A-16F, and has recorded its acceptance at the registry of deeds, a lien will arise on the property supplied water and sewer service automatically by operation of law after the day any charge becomes overdue. Any unpaid charge, and interest and collection costs, for which a valid lien exists may then be added to the real estate tax on the property and if it remains unpaid, the property may be taken into tax title. If the unpaid charge is added to the tax of the next fiscal year after the lien arises, the lien is coterminous with the tax lien on the property. Otherwise, it terminates on October first of the third year after the charges becomes overdue. Other collection remedies available include a lawsuit against the person assessed the charge under G.L. Ch. 60 §35, set-off against monies owned to the person assessed under G.L. Ch. 60 §93, and denial, revocation or suspension of licenses and permits under G.L. Ch. 40 §57 if accepted. The town may also shut off water or sewer service to the property. G.L. Ch. 40 §42B; Ch. 83 §16B. **Also see 95-576 (6/23/95).** Also found under **COLLECTION PROCEDURES; FEES AND CHARGES.**

92-140 (2/18/92)
Subordination.
Betterment/Special Assessment Liens.
Subordination of Betterment/Special Assessment Liens to Mortgagees.
A tax collector may not agree to subordinate a municipality's lien securing the payment of a betterment or special assessment to a mortgagee bank. Also found under **BETTERMENTS AND SPECIAL ASSESSMENTS.**

92-763 (10/29/92)
Light Liens.
Liens for Delinquent Light Charges on Properties Located in Neighboring Municipalities.
Delinquent charges for utility service provided by a municipal utility department constitute liens on all parcels served, including those located in a neighboring municipality, if the utility has accepted G.L. Ch. 164 §§58B-58F and made the required filings. The assessors of the neighboring municipality must add any delinquent charges constituting liens certified to them to the tax on the property, and once collected, the charges are to be turned over to the utility department. Also found under **COLLECTION PROCEDURES; FEES AND CHARGES; LIGHT PLANTS.**

92-965 (10/30/92)
Water Liens.
Liens for Unpaid Charges for Installation and Testing of Backflow Devices.
Unpaid charges for the installation and testing of backflow protection devices in properties to ensure water safety and purity are part of the water service supplied to the property, constitute liens if the municipality has accepted G.L. Ch. 40 §§42A-42F and recorded its acceptance, and may be collected as part of the tax on the property. Also found under **COLLECTION PROCEDURES; FEES AND CHARGES.**

92-1070 (1/14/93)
Local Tax Liens.
Lien Certificates.
Discharges.
Validity of Liens for Revised Assessments Made After Municipal Lien Certificates Issued.
A lien for a revised (or omitted) tax assessment is not discharged simply because a recorded municipal lien certificate issued before the assessment does not contain a statement that the taxes are unascertainable. **Also see 91-429 (7/2/91).** Also found under **ASSESSMENT ADMINISTRATION; COLLECTION PROCEDURES.**

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93-298 (4/14/93)
Demolition Liens.
Collection of Unpaid Demolition Charges After Liens Expire.
A demolition charge imposed under G.L. Ch. 139A and Ch. 143 §9 to recover the cost of removing an abandoned and burned structure cannot be added to and collected as part of the real estate tax on the property after the lien has expired. A city or town collector may collect the charge by bringing a lawsuit against the person assessed the charge within six years of the due date or by having the treasurer withhold or set-off the charge against monies owed by the municipality to that person. G.L. Ch. 60 §§35 and 93. A city or town may also collect the charge by denying, revoking or suspending local licenses and permits of that person if it has accepted G.L. Ch. 40 §57 and adopted a by-law in accordance with its provisions. **Also see IGR No. 92-208 "Demolition Charges and Liens" (November 1992).** Also found under **COLLECTION PROCEDURES; FEES AND CHARGES**.

93-421 (5/17/93)
Solid Waste Disposal (Trash/Landfill) Liens.
Establishing Liens for Unpaid Solid Waste Disposal Fees.
An automatic lien arises for delinquent trash or solid waste disposal fees and charges imposed under G.L. Ch. 44 §28C(f) and such fees may be collected by adding them to the property tax bill if a city or town votes to impose a lien under that statute and records the acceptance at the registry of deeds. Alternatively, a city or town may establish a lien for trash fees by voting to impose a municipal charges lien for the fee under G.L. Ch. 40 §58. **Also see 93-147 (3/4/93); 91-830 (10/22/91); 95-576 (6/23/95) (To ensure the validity of liens for unpaid landfill charges imposed under G.L. Ch. 44 §28C(f), any town vote to impose the lien for such charges should specifically reference Ch. 44 §28C(f) and be recorded at the registry. The vote can be an acceptance of the statute or some other town meeting action stating that the outstanding charges will constitute liens under G.L. Ch. 44 §28C(f). If the vote does not specifically refer to the statute it could be construed as imposing the lien under G.L. Ch. 40 §58, which can be done, but the lien will not arise automatically when the charge becomes overdue).** Also found under **COLLECTION PROCEDURES; FEES AND CHARGES.**

93-944 (1/5/94)
Betterment/Special Assessment Liens.
Effect of Late Recording of Betterment/Special Assessment Lien Statements on Validity of Liens.
Lien Certificates.
Listing of Betterments/Special Assessments on Lien Certificates Before/After Recording of Betterment/Special Assessment Lien Statements.
A municipal lien certificate issued between the time a betterment or special assessment is authorized for a public improvement and a statement is recorded at the registry of deeds to establish liens on the properties to be benefited by the improvement may note the potential assessment, but the lack of notice will not preclude the municipality from enforcing its lien against any subsequent purchaser who had knowledge of the installation of the improvement and enjoyed its full benefits from the beginning, or against any subsequent purchaser or a mortgagee without such knowledge, if the betterment or special assessment lien statement was recorded according to the time frame in the relevant recording statute. Thus, a lien statement recorded after the improvement is installed rather than according to the statutory time frame may result in unenforceable liens and uncollectible assessments. A betterment or special assessment that has been recorded and for which a lien has arisen at the time a municipal lien certificate is issued should be listed under "Improvements Voted for Which There Will Probably Be Betterments/Special Assessments" until the assessment is made by the relevant board and committed by the assessors to the collector. At that time, the outstanding amount would be listed under "Unpaid Betterments/Special Assessments Not Yet Added to Tax" until it is added to a particular year's tax. If the assessment is added to a tax after apportionment, each portion and committed interest would be shown on the certificate under the applicable fiscal year, with the outstanding balance of the assessment not yet added to a tax listed under "Unpaid Betterments/Special Assessments Not Yet Added to Tax. Also found under **BETTERMENTS AND SPECIAL ASSESSMENTS; COLLECTION PROCEDURES**.

94-196 (4/1/94)
Water Liens.
Sewer Liens.
Liens for Water and Sewer Bills Charged to Condominium Associations.
Water and sewer charges for a condominium development may be billed to the association of unit owners and any payment received from the association prior to the due date should be applied against the bill as a whole. If the bill is not paid in full by the due date, liens to secure the unpaid amount attach to the individual condominium units in proportion to the percentages of the undivided interests of the respective units in the common areas and facilities set forth in the master deed. Thereafter, any payments made by the association should be applied to reduce all the unit liens on a pro rated basis unless the payment is accompanied by instructions to apply it to reduce particular units' liens. Any payment by or on behalf of a particular unit owner should be applied against the lien on that owner's unit. Also found under **COLLECTION PROCEDURES**.

95-164 (5/18/95)
Federal Tax Liens.
Effect of Tax Foreclosures on Federal Tax Liens on Land Taken Before Liens Filed.
A federal tax lien on land that was taken into tax title prior to the filing of the federal lien is not extinguished by a land court foreclosure decree if certain procedural requirements involving notice to the United States Attorney for the district where the action is brought are not satisfied. 28 U.S.C. §2410. Also found under **COLLECTION PROCEDURES**.

95-403 (4/24/95)
Water Liens.
Sewer Liens.
Abatement of Water/Sewer Charges Added to Taxes.
A water or sewer charge constituting a lien and added to a real estate tax can only be abated by the board of water/sewer commissioners (or department) if (1) the property owner filed an application for abatement of the charge with the board within the same 30 day deadline as the abatement application for the tax to which the charge was added, (2) the board has received authority from the commissioner of revenue to abate under G.L. Ch. 58 §8, or (3) a special act of the legislature authorizes the abatement. If an abatement is granted, the board must notify the assessors, collector and accounting officer and issue an abatement certificate to the property owner. The assessors may actually prepare the certificate, but it is to be issued by the board or department head who granted the abatement. Also found under **FEES AND CHARGES**.

95-495 (5/24/95)
Water Liens.
Sewer Liens.
Discharges.
Collection of Outstanding Condominium Association Water/Sewer Charges Erroneously Added to Taxes on Developer's Unit.
Delinquent water and sewer charges assessed to a condominium association, but erroneously added to the fiscal year 1994 real estate tax of the only unit still owned by the developer, should be allocated by the assessors to the other units in proportion to their share of the undivided interest in the common areas and facilities, and then reassessed as part of the FY94 tax. If a lien cannot be added to the tax on a particular unit because a clean municipal lien certificate was recorded on that unit in the meantime, the association would still be personally liable for those charges and depending on the age of the charges, the collector may be able to bring a lawsuit to collect. If any amounts are uncollectible because of the inability to enforce a lien or bring a lawsuit, a request for authority to abate under G.L. Ch. 58 §8 may be submitted to the commissioner of revenue. Also found under **COLLECTION PROCEDURES; FEES AND CHARGES**.

95-951 (10/2/95)
Water Liens.
Sewer Liens.
When Liens Are Added to Taxes.
Overdue water and sewer charges constituting liens are added to a year's tax under G.L. Ch. 40 §42C and Ch. 83 §16C when that tax is committed to the collector. Each installment payment is not a separate tax to which any overdue charges can be added. In the case of community using semi-annual payment system, this means overdue charges cannot first be added to the second half bill. They must be added to the year's tax at commitment and are payable in the first half installment under G.L. Ch. 59 §57. Also explains duration of liens. **Also see 93-149 (3/4/93).** Also found under **COLLECTION PROCEDURES**.

Light Plants

92-392 (10/15/92)
Charges.
Revenues.
Appropriation of Interest Collected on Delinquent Light Charges for Plant Operations.
Interest on a delinquent light charge constituting a lien that is committed with the charge and collected cannot be appropriated, together with the collected charge, for the operation of a municipal light plant under G.L. Ch. 164 §58E. Only the collected charge may be appropriated.

92-720 (8/4/92)
Plant Managers.
Authority to Hire Legal Counsel.
A municipal light plant manager, not the light board or commission, has the sole authority to employ outside counsel under G.L. Ch. 164 §56.

92-763 (10/29/92)
Charges.
Collection of Delinquent Light Charges on Properties Located in Neighboring Municipalities.
Delinquent charges for utility service provided by a municipal utility department constitute liens on all parcels served, including those located in a neighboring municipality, if the utility has accepted G.L. Ch. 164 §58B -58F and made the required filings. The assessors of the neighboring municipality must add any delinquent charges certified to them to the tax on the property, and once collected, the charges are to be turned over to the utility department. Also found under **COLLECTION PROCEDURES; FEES AND CHARGES; LIENS**.

95-165 (3/22/95)
Plant Operations.
Disbursement Procedures.
Accountant's Role in Approving Light Plant Bills.
Recovery of Unlawful, Fraudulent or Excessive Light Plant Expenditures.
Plant Managers.
Payment of Light Plant Manager's Personal Attorney's Fees in Suit Against Individual Selectmen.
A town accountant has authority under G.L. Ch. 164 §56 and G.L. Ch. 41 §56 to disapprove light department bills as unlawful, fraudulent or excessive. Town meeting may authorize the board of selectmen, accountant or other officer to bring an action for money had and received to recover amounts paid for light department expenses which are not lawful, were fraudulently obtained or in excess of appropriation, if such authority is not otherwise provided by by-law or charter. In addition, the town may be able recover certain unlawful payments under G.L. Ch. 268A §21; G.L. Ch. 164 §69. Also discusses whether the light plant could incur expense of the light plant manager for personal attorney's fees incurred in a suit against an individual selectmen for defamation. Also found under **FINANCIAL MANAGEMENT**.

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Local Officials and Employees

90-622 (10/25/90)
Terms of Office.
Assistant Treasurers.
An assistant treasurer appointed under G.L. Ch. 41 §39A is an officer with an indefinite term of office and no reappointment is required until the assistant resigns, retires or is otherwise removed from office. Removal would probably require joint action by the treasurer and the selectmen (or mayor).

92-259 (4/6/92)
Health Insurance.
Reduction of Municipal Contributions to HMO Premiums.
A municipality, which has no collective bargaining units, may reduce its contribution for employee HMO premiums down to the minimum 50% without bargaining about the reduction. The decision about the percentage to be paid by employees is made by the board of selectmen in a town, subject to a sufficient appropriation.

92-328 (4/13/92)
Employment Contracts.
Expenses.
Out-of-state Relocation Expenses of Town Administrators.
A board of selectmen may enter into an employment contract with a town administrator, which may include out-of-state relocation expenses under G.L. Ch. 41 §108N, provided there is a sufficient appropriation to cover the cost of the contract.

92-732 (8/26/92)
Terms of Office.
Assistant Tax Collectors.
A tax collector's appointment of an assistant tax collector under G.L. Ch. 41 §39C is for an indefinite term, in the absence of a by-law establishing a definite term, and a new collector need not reappoint the assistant upon taking office.

92-765 (8/24/92)
Layoffs.
City Employees/Officials Covered by Salary Ordinances.
A mayor may lay off the municipal sanitarian whose salary is fixed by ordinance because he is not required under G.L. Ch. 41 §33A to recommend in the budget sufficient appropriations to pay salaries in the next fiscal year of all persons currently employed. Also found under **BUDGETS**.

92-798 (3/22/93)
Workers' Compensation.
Extension of Coverage to Elected and Appointed Officers and Employees.
A municipality may extend workers' compensation coverage to all elected and appointed officers and employees, whether paid or not, except members of the fire and police forces and the board of selectmen, under G.L. Ch. 152 §69. A town meeting vote is required to include employees other than laborers, workmen and mechanics. A separate town meeting vote is required to authorize the board of selectmen to extend coverage to elected and appointed officers designated by the board.

92-903 (10/8/92)
Expenses.
Salaries/Compensation.
Reimbursement for Taxes/Tips on Business Meals.
Employees may be reimbursed for taxes and reasonable tips paid on business meals if the expense was authorized and incurred while within the scope of employment, and the reimbursement is included as part of the total wage and benefit package of employment.

92-920 (10/19/92)
Health Insurance.
Elected Officials.
Extension of Coverage to Part-time Elected Officials.
A town may, but is not required to, extend health insurance coverage to elected officials who receive compensation for their work and who work less than 20 hours a week regularly in the employment of the town. G.L. Ch. 32B §2(d). The decision to extend coverage is made by the selectmen, and if they decide to do so, they should cover all eligible officials. Benefits may not be extended on a per office or per individual basis. **Also see 92-308 (7/6/92) (A town cannot usurp the power of the selectmen to determine whether compensated elected officials working less than 20 hours per week regularly in the service of the town could be eligible for group health insurance coverage, provided the town appropriated sufficient funds to cover the cost).**

93-153 (4/3/93)
Salaries/Compensation.
Fixing Compensation of District Assessors and Collectors.
The selectmen, not the assessors (or collector) determine with the prudential committee of a district the appropriate compensation to be paid to the assessors (or collector) for the additional duties imposed by the district. Also found under **DISTRICTS**.

93-198 (3/22/93)
Independent Contractors/Employees.
Wage Tax Withholding on Payments Made to Appointed Inspectors.
Building, wiring and plumbing inspectors who are appointed for a fixed term, fill positions with official duties established by the general laws, are subject to town control as to hours of availability and the

number and types of inspections, and are paid from an appropriation based on the number of inspections completed, are employees for the purpose of wage tax withholding. **For an official and definitive opinion on this issue, treasurers should consult the Internal Revenue Service.**

93-221 (3/24/93)
Health Insurance.
Coverage of Employees on Unpaid Leaves.
Employees on unpaid leave of absences must pay 100% of their health insurance premiums to remain covered during the months of total unpaid leave under G.L. Ch. 32B §7A(b). (This case does not involve leaves due to illness.)

93-759 (9/24/93)
Health Insurance.
Elected Officials.
Qualifying Compensation for Health Insurance Coverage.
Any amount of compensation including salaries, wages, stipends or other form of payment, other than simple reimbursement for out of pocket costs, qualifies as compensation for purposes of determining eligibility for health insurance coverage with municipal contribution for elected officials.

94-32 (1/24/94)
Health Insurance.
Coverage of Call Firefighters.
Call firefighters are entitled to health insurance coverage with municipal contributions if G.L. Ch. 32B §2B is accepted by a city or town.

94-706 (9/1/94)
Health Insurance.
Elected Officials.
Different Contribution Rates for New Part-time Elected Officials.
A town, acting through its board of selectmen, may not adopt a policy of extending health insurance coverage to newly elected part-time officials at a different town contribution rate than previously elected part-time officials under G.L. Ch. 32B §§7, 7A and 16.

94-826 (10/18/94)
Health Insurance.
Municipal Contributions to Premiums for Retired Employees.
A town must provide group health insurance to retirees with premiums paid in part by the town in the same proportion as active town employees if the board of selectmen accept G.L. Ch. 32B §19 and an appropriation is available to cover the cost. Town meeting does not have to first accept G.L. Ch. 32B §9A or 9E. The contributions will be part of an agreement made between the selectmen and a public employee committee.

94-871 (10/6/94)
Health Insurance.
Coverage of Intermunicipal Shared Employees.
An employee whose service is divided among two or more municipalities as a shared employee and whose total service is at least 20 hours a week is entitled to health insurance coverage. Under G.L. Ch. 32B §2(d), if the employee is not otherwise eligible for health insurance in one of the municipalities, then the municipality that pays more than fifty percent of his salary must provide the coverage. If no municipality pays more than fifty percent of the salary, then the municipality paying the largest share is responsible. Where the salary is equally divided among municipalities, the municipality with the largest population must provide coverage. The other municipalities involved in the shared employment arrangement may reimburse the municipality providing the coverage for their proportional share of the premium, by an intermunicipal agreement under G.L. Ch. 40 §4A or other appropriate means.

95-68 (2/8/95)
Independent Contractors/Employees.
Wage Tax Withholding on Payments to Therapists;, Psychologists and Other Specialists Hired by School Departments.
Individuals performing specialty services for a school department in occupational, speech and physical therapy, and psychological, diagnostic, specialized reading and medical evaluations may be independent contractors under state and federal law, rather than employees, for income tax withholding purposes and for purposes of being paid from an expense account, where they are expert professionals who perform similar services to other schools and institutions, have control over their schedules and are not subject to school department control over the details of how they perform the services. The determination of whether an individual is an employee or independent contractor is made on a case by case basis by the Internal Revenue Service based on several enumerated factors, but the primary test would be whether the district has the right to control and direct the individual in every aspect of the work. For an official and definitive opinion on the income tax issue, treasurers should consult the Internal Revenue Service.

95-93 (2/6/95) (3/9/95)
Salaries/Compensation.
Fixing Salaries of Non-union Employees Not Covered by Salary By-laws.
In the absence of a by-law establishing a personnel classification plan that sets the compensation rates of town employees under G.L. Ch. 41 §108A, a board of assessors may fix the pay of its non-union clerk to the extent permitted within its departmental appropriation. G.L. Ch. 41 §108. A policy approved by town meeting that provides for the board of selectmen to submit recommendations to the finance

committee on pay rate schedules for town employees does not fix those pay rates. Moreover, the authority of the board of selectmen to disapprove warrants as unlawful, fraudulent or excessive under G.L. Ch. 41 §52 does not authorize them to fix the rate of pay for non-union employees not covered by a salary by-law.

95-128 (5/9/95)
Leaves.
Payments of Benefits to Injured Police Officers/Firefighters from Injury Leave Insurance.
A town may not structure an injury leave insurance policy to pay benefits directly to an injured policeman or firefighter, in order to save amounts in the salary account to pay replacement officers, without a legislative action. General Laws Ch. 41 §111F requires payment of "leave without loss of pay ... paid at the same times and in the same manner as ... regular compensation ..."; *i.e.*, from the salary account. Insurance reimbursements go to the town treasury and cannot be used without further appropriation under G.L. Ch. 44 §53. While the town has authority under G.L. Ch. 40 §5 to appropriate funds to purchase insurance to protect it from liability under G.L. Ch. 41 §111F, that authority does not appear to extend to providing coverage directly for the employee.

95-182 (3/15/95)
Health Insurance.
Independent Contractors/Employees.
Pensions.
Wage Tax Withholding and Health Insurance Coverage for Clerks Paid by Meeting/Case.
A clerk taking minutes for three town boards paid on a per meeting or per case basis from an expense account does not qualify for group insurance benefits as an independent contractor, even if the clerk works a minimum of 20 hours regularly. If the board of selectmen determines the clerk is eligible for group insurance, the position would have to be considered one of employment payable from a payroll account from which income tax deductions and retirement deductions should be made. However, if the board of selectmen and town accountant provide the treasurer with warrants for payment of the town's share of group insurance contributions and warrants for payments from the expense account for payment of the employee, the town treasurer must pay the warrants so approved. In such a case, however, the town may be liable for failure to withhold the proper deductions.

95-335 (5/24/95)
Employment Contracts.
Leaves.
Extension of Paid Sick Leave Beyond Amount Specified in Contracts.
Despite the broad authority of the board of selectmen to make an employment contract with the chief executive or administrative officer under G.L. Ch. 41 §108N, the board cannot authorize indefinite paid sick leave beyond the 10 days specified in the contract. The board may modify the contract to grant additional, albeit reasonable, paid sick leave to the manager only in exchange for sufficient consideration; *i.e.*, a promise beyond the work performance already required in the contract. The severance pay provisions authorized by the statute could only become effective upon the termination or resignation of the manager.

95-340 (7/7/95)
Salaries/Compensation.
Elected Officials.
Vote to Fix Annual Salaries of Elected Officials. Payment of Hourly Rate to Elected Officials.
A town must fix the salaries of the members of the elected board of assessors annually, which requires at least a line item appropriation or other vote, together with a sufficient appropriation, setting a specific annual amount to compensate the assessors, and payment by the hour for services rendered, at least without some fixed number of hours, is not sufficiently definite to fix an annual salary. Town meeting may fix the salaries in different amounts for each assessor, and a separate vote to pay a dollar amount in compensation above that already voted under the budget article for a specified period of the fiscal year to a specifically named assessor, is sufficient to fix the assessors' annual compensation at the amount shown in the budget article, plus the additional amount for the specified months. It does not establish an hourly rate to be paid to that person. **Also see 93-89 (2/5/93) (The salaries of elected officials must be fixed annually by vote of annual town meeting and elected positions cannot be included in a town's personnel classification plan and by-law. G.L. Ch. 41 §§108 and 108A); 92-380 (4/28/92)(The salaries of elected officials must be individually fixed by annual town meeting under G.L. Ch. 41 §108 and if they are not fixed by a specific vote, then the salaries must be fixed by separate appropriations in the budget for each official's salary).**

95-367 (6/12/95)
Expenses.
Establishment of Mileage Reimbursement Rates.
Any reimbursement for mileage expenses incurred by board of health employees in the performance of their duties is subject to any uniform rate set by town meeting for all town employees. While the board of health has independent authority under G.L. Ch. 111 §27 to establish the salary and other compensation levels of public health employees, mileage reimbursements are not related to the special qualifications, skills or expertise of such employees and are not connected with their particularized service. Reimbursements are intended to make an employee whole for out of pocket expenses incurred in the performance of duties.

95-550 (9/27/95)
Salaries/Compensation.
Dual Compensation of Elected Assessors Appointed as Assistant Assessors, Elected Treasurers Serving in Other Treasury Positions, Appointed Accountants Working for Auditors, Appointed Fire Chiefs Serving as Call Firefighters.
An elected assessor could be appointed by the board of assessors to the assistant assessor position with a salary fixed by town meeting under G.L. Ch. 41 §4A and G.L. Ch. 268A §21A, if so authorized by annual town meeting. However, an assessor could not receive an hourly wage as an assessor or other position in the assessing department. A written disclosure of financial interest must be made to the selectmen and the selectmen must approve the exemption under G.L. Ch. 268A §20. An elected treasurer could not appoint himself to another position in the department and any extra work he performs would have to be compensated from the salary fixed by town meeting under G.L. Ch. 41 §108. An appointed accountant could be paid for additional work in aiding the auditor, but the work appeared to be within the incidental duties of the accountant and should be compensated from the salary account. The fire chief would appear to have a conflict in interest in assigning himself to appear at fires in a role as a call firefighter rather than as fire chief. His salary should be adjusted and he should be allowed to determine when he had to appear at a fire. **For an official position on this issue, local officials should consult the state ethics commission, which is responsible for the administration of the Conflict of Interest Law.** Also found under **CONFLICT OF INTEREST**.

95-643 (10/2/95)
Leaves.
Salaries/Compensation.
Payment of Temporary Appointee During Indefinite Absence of Dog Officer.
Recovery of Overpaid Wages.
A town dog officer, who is not listed in the town bylaws as entitled to paid leave, could not be paid a salary while out of the country when the work was being performed by temporary officers. The office could have been vacant as a matter of law when the incumbent left for a lengthy and indefinite absence, such that the appointed temporary officer performing the duties would have a claim for compensation. The accountant is entitled to request whatever documentation she deems necessary to verify that services have been rendered and the wage or salary be paid. Redirection of salary to repay an overpayment as a setoff under G.L. Ch. 60 §93 might be permissible, and such a setoff would not appear to violate G.L. Ch. 149 §148 requiring prompt payment of wages. Any overpayments could be recovered at law if properly authorized by town meeting or the appropriate town officers.

95-670 (8/21/95)
Collective Bargaining.
Employment Contracts.
Salaries/Compensation.
Payment of Compensation of School Administrators/Employees in Advance of Service.
Individual school administrator contracts and collective bargaining agreements requiring 26 equal installment payments of compensation could not require payment of wages in advance of service being performed in any pay period under G.L. Ch. 41 §§41 and 56. The school compensation statute, G.L. Ch. 71 §40, authorizing equal payments of compensation over summer months allows delayed compensation, but not advance compensation. Collective bargaining agreements could not supersede the statutes allowing payments only when services have already been rendered. Also found under **FINANCIAL MANAGEMENT**.

95-677 (9/1/95)
Health Insurance.
Reimbursement of Surviving Spouses for Municipal Share of Premiums.
A town meeting vote to pay $7761.25 to the surviving spouse of a police officer "to reimburse" her for the town's share of premiums for health insurance could not require payment because the town had never accepted G.L. Ch. 32B §9D or 9D½ authorizing it to make contributions for surviving spouses of deceased employees and because under the town's charter (chapter 592 of the acts of 1950), the town manager and board of selectmen had exclusive authority to settle cases. Payment could only be made if authorized by the legislature on home rule petition.

95-731 (8/17/95)
Appointments.
Power of District Prudential Committees to Appoint Assistant Assessors for Districts.
The prudential committee of a district where the assessment function has been vested in the boards of assessors of the two towns in which the district is located cannot appoint an "assistant assessor" or other person to perform any valuation, or other task, required to determine district assessments. However, if the appointee will only be responsible for identifying the district proprietors to be assessed, which under the district's enabling legislation is the responsibility of district officials, not the assessors, or for performing other tasks apart from the actual assessment process, the fact that the committee chose to call the position "assistant assessor" does not preclude the appointment. Also found under **DISTRICTS**.

95-821 (8/15/95)
Unemployment Compensation.
Effect of Education Reform on Teacher Eligibility for Unemployment Compensation During Summer. Although education reform made increased funding for schools more likely, it does not provide any conclusive evidence that teachers have a reasonable assurance of employment in the next academic year in any individual case. Nor does the fact that teachers were paid in full by July first preclude them from recovering unemployment benefits in July and August if they have no reasonable assurance of employment in the following school year under G.L. Ch. 151A §28A.

95-886 (9/8/95)
Salaries/Compensation.
Payment of Salaries for Required Officers Inadvertently Omitted from Annual Budgets. An animal inspector appointed by the board of selectmen and paid from the selectmen's budget for the previous two years could not be paid from the police budget because the inspector's compensation was inadvertently omitted from the selectmen's budget. However, a reserve fund transfer would be permissible to pay this $1600 annual salary during the interim period prior to appropriation at special town meeting, because the position was required, compensation is mandated by G.L. Ch. 129 §17 and services had already been performed. No payment from the police wage account could be made without the police chief's approval under G.L. Ch. 41 §41, as the department head. Also found under **FINANCIAL MANAGEMENT; SPECIAL FUNDS**.

95-956 (10/19/95)
Collective Bargaining.
Attendance of Finance Committee Members at School Committee Bargaining Strategy Sessions. Nothing in the collective bargaining, school committee or open meeting laws prohibits finance committee members from attending school committee collective bargaining strategy sessions; but the school committee may exclude such members from attendance of its executive sessions under G.L. Ch. 39 §23B(3) if it believes such attendance would have a detrimental effect on bargaining. The school committee need not request an appropriation to fund a collective bargaining agreement if it has a sufficient bottom line appropriation to cover increased cost items and therefore, it may have no need to involve the finance committee in its deliberations. Also found under **SCHOOLS**.

95-1145 (12/26/95)
Salaries/Compensation.
Retention of Demand Fees by Tax Collectors. A tax collector may retain demand fees collected from delinquent taxpayers after their properties have been placed in tax title, as well as before, under G.L. Ch. 60 §55, except where the municipality has adopted a by-law requiring municipal officers to pay their fees into the treasury. **Also see 92-464 (6/30/92) (A tax collector may retain statutory collection fees established by G.L. Ch. 60 §15 as compensation unless the municipality has adopted a by-law requiring officers to pay their fees into the treasury).** Also found under **FINANCIAL MANAGEMENT**.

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E92-54 (4/16/92)
Abatements.
Changes in Ownership.
Transfers or Cancellations of Registrations.
Calculation of Abatements Where Change in. Ownership/Registration Occur in Different Months.
The amount of a motor vehicle excise abatement due because of a change in vehicle ownership and a transfer or cancellation of its registration is calculated from the month after the final requirement for the abatement has been met.

E92-145 (10/26/92)
Assessments.
Wrong Owners.
Billing.
Proper Bills.
Excise Assessed and Billed to Wrong Persons.
A motor vehicle excise assessed and billed to the wrong person cannot be enforced. The assessors should abate the excise (after receiving a timely filed abatement application or authority from the commissioner of revenue under G.L. Ch. 58 §8) and a new bill should be issued to the correct person. That bill will be due thirty days from the date of mailing.

E93-36 (3/19/93)
Special Plates.
Exemptions.
Occasional Personal Use of Vehicles with Dealer Plates.
A motor vehicle operated with a dealer plate is not exempt from a motor vehicle excise under G.L. Ch. 60A §1 where the operator states on his application for exemption that the vehicle is used occasionally for personal use.

E93-44 (3/10/93)
Exemptions.
Type of Disabilities Required for Non-veteran Handicapped Taxpayers.
A non-veteran taxpayer who has experienced a partial loss of use of his legs is not eligible for an exemption from the motor vehicle excise under G.L. Ch. 60A §1. To receive the exemption, the taxpayer must have either literally lost both legs or both arms, or have totally lost the use of those limbs. **Also see E93-226 (12/7/93) (Any magnitude of lost use less than the constructive equivalent of an actual loss of both legs or both arms is not sufficient for a motor vehicle excise exemption to a non-veteran under G.L. Ch. 60A §1); 95-245 (5/11/95) (A taxpayer whose mobility is impaired by occasional "dizziness caused by a head injury" does not qualify for an exemption from the motor vehicle excise under G.L. Ch. 60A §1. The excise exemption for non-veterans applies to only a handicapped individual who has lost or totally lost the use of both legs).**

E93-63 (4/15/93)
Billing.
Proper Bills.
Bills Mailed to Wrong Addresses.
A motor vehicle excise bill not mailed to the registrant's address, as it appears on the vehicle's registration, is not a proper bill under G.L. Ch. 60A §6 and is not enforceable. Only if a bill is mailed to the correct address is a bill enforceable whether or not the registrant actually received it. The erroneous bill should be abated and if the assessors no longer have jurisdiction to do so, they should seek authority to abate from the commissioner of revenue under G.L. Ch. 58 §8. The bill should then be reissued to the right address. The new bill is due thirty days from the date of reissuance.

E93-69 (5/19/93)
Abatements.
Out-of-state Registrations and Confiscations of Massachusetts Plates.
An abatement of a motor vehicle excise granted where the taxpayer moves out of state, registers his vehicle in that state and cancels his Massachusetts registration is effective from the date the last condition is performed. If the state in which the vehicle is being registered confiscates the Massachusetts plates, cancellation of the Massachusetts registration is deemed to have occurred the date the vehicle was registered.

E93-77 (5/27/93)
Abatements.
Assessments.
Transfers of Registration to Second Vehicle Without Changes in Ownership.
Reregistration of Vehicles During Same Calendar Year.
A person owning a motor vehicle registered as of January first who is assessed and pays a full calendar year excise on the vehicle, transfers the registration to a second vehicle during the year and pays an excise on the second vehicle, and then transfers the registration back to the first vehicle is not liable for a second excise on the first vehicle. Nor is he entitled to an abatement under G.L. Ch. 60A §1 of either the original excise on the first vehicle or the excise on the second vehicle because there was no transfer in ownership in either case.

E93-178 (10/22/93)
Exemptions.
Vehicle Leased to Charitable Organizations. Full Calendar Year.
A vehicle owned by a leasing company and leased to a charitable organization for a two year period, June 1, 1993 to May 31, 1994, is exempt from the motor vehicle excise assessed for calendar year 1994, January 1, 1994 through December 31, 1994, but not for any period of the lease not constituting a full calendar year. **Also see 95-330 (4/19/95) (Vehicle owned by leasing company and leased to charitable corporation for two years, from October 1, 1994 to October 1, 1996, is exempt from the motor vehicle excise assessed for calendar year 1995 only).**

93-737 (9/30/93)
Exemptions.
Vehicles Leased to Educational Collaboratives/ Other Governmental Entities/Agencies.
A vehicle owned by a leasing company and leased to an educational collaborative, which is a governmental entity established under G.L. Ch. 40 §4E, is not exempt from the motor vehicle excise under G.L. Ch. 60A §1. **Also see E94-53 (3/1/94) (A vehicle owned by a leasing company and leased to a company, which in turn leases it to a state agency, is not exempt from the motor vehicle excise under G.L. Ch. 60A §1, nor would it be exempt if leased by the company directly to the state agency. The only leased vehicles entitled to exemption are those leased for a full calendar year to charitable organizations); 95-35 (2/1/95).**

E94-399 (6/29/94)
Special Plates.
Assessments.
Assessment of Repair Plates Not Placed on Motor Vehicles.
An auto body repair business that holds repair plates that are not used on any personal vehicles, nor placed on any customer vehicles, is not liable for a motor vehicle excise under G.L. Ch. 60A. The motor vehicle excise may not be assessed on the repair plates, as opposed to vehicles.

95-44 (2/15/95)
Exemptions.
Vehicles Owned by Religious Organizations.
A motor vehicle owned and registered by a religious organization whose personal property is exempt under G.L. Ch. 59 §5(10) is exempt from motor vehicle excise. G.L. Ch. 60A §1.

95-77 (2/17/95)
Assessments.
Assessment of Excise on Backhoes and Similar Machinery.
Special Plates.
Owner-contractor Plates.
Backhoes and other similar machinery and equipment are not motor vehicles for purposes of assessing the motor vehicle excise under G.L. Ch. 60A, but are tangible personal property, even if registered. General Laws Ch. 90 §1 expressly excludes from the definition of motor vehicles "those vehicles which are (a) used for other purposes than transportation of property, (b) incapable of being driven at a speed exceeding twelve miles per hour and (c) used exclusively for building, repair and maintenance of highways or designed especially for use elsewhere than on the traveled part of ways." An owner of a backhoe or similar machinery may qualify for owner-contractor plates, and may move the machinery along the road using such plates. Alternatively, an owner may register the machinery. However, registering a piece of machinery or attaching a registration plate to it does not transform that machinery into a motor vehicle. Also found under **PERSONAL PROPERTY.**

95-94 (2/9/95)
Collection.
Bankruptcy Discharge of Motor Vehicle Excises.
Motor vehicle excises assessed for the three years preceding the filing of the bankruptcy petition should be priority claims that are not within the scope of the general discharge in bankruptcy. **Also see E91-85 (6/4/91) (Motor vehicle excises should be "excises on transactions" and treated as priority claims if they were assessed during the three years before the filing of the bankruptcy petition, although it is possible excises could be treated as property taxes entitled to priority only for the year preceding the filing of the petition. Interest accrued on priority claim excises before the petition was filed would also be treated as priority claims, but interest accrued after the filing would generally be allowed only if the debtor's assets were sufficient to cover his other obligations. Priority claims are not discharged whether or not a claim was filed or allowed in the bankruptcy proceeding. However, any excise not accorded priority status would be discharged and uncollectible).** Also found under **COLLECTION PROCEDURES.**

95-283 (5/12/95)
Exemptions.
Vehicles Owned and Registered by Diplomats and Civilian/Military Personnel of Foreign Countries.
Vehicles owned and registered by the Republic of Korea's Consul, and a British civil servant attached to United Kingdom Armed Forces in the United States as part of NATO, are exempt from the motor vehicle excise. Under the Vienna Convention on Consular Relations generally, as well as the Korean Consular Convention and the NATO Treaty specifically applicable here, full time foreign consular officials and employees, as well as civilian and armed forces personnel, are typically exempt from state and local taxes imposed solely due to their temporary presence in the United States.

E95-329 (4/24/95)
Special Plates.
Exemptions.
Non-veteran Taxpayers With Handicapped Plates.
The standards for eligibility for handicapped plates and for an exemption from the motor vehicle excise are different and, therefore, a person who possesses handicapped plates is not necessarily entitled to an exemption. The person must meet the eligibility requirements of G.L. Ch. 60A §1, which require for

non-veterans the loss of both arms or legs, or the functional loss of use of both arms or legs, or permanent loss of a specified degree of vision. **Also see E95-584 (6/7/95) (A taxpayer whose physician states that he is "unable to ambulate without the use of a leg brace" on one leg does not qualify for an exemption from the motor vehicle excise under G.L. Ch. 60A §1 even if he qualifies for a handicapped plate, which also does not appear to be the case. The taxpayer must have lost both legs, or totally lost the use of both legs, to qualify for the exemption).**

95-437 (5/2/95)
Exemptions.
Non-domiciliary Military Personnel No Longer Residing in Massachusetts.
Military personnel no longer living in Massachusetts who seek to renew their Massachusetts registrations will not be exempt from the motor vehicle excise under 50 U.S.C. App. §574 (The Soldiers and Sailors Civil Relief Act). That acts only exempts non-domiciliary military personnel stationed in this state pursuant to military orders.

95-982 (10/31/95)
Exemptions.
Vehicles Held in Trust for Handicapped Persons.
A motor vehicle held in trust for the benefit of a handicapped person is not exempt from the motor vehicle excise under G.L. Ch. 60A §1A because the vehicle is owned by the trustees of the trust, not the handicapped person. She possesses only a beneficial interest in the vehicle.

92-1064 (1/14/93)
Executive Sessions.
Discussion of Abatement/Exemption Applications at Assessors' Meetings.
Under the Open Meeting Law, a board of assessors may discuss the contents of an application for an abatement or exemption in executive session and keep the minutes of the session secret where it is necessary to comply with the provisions of the general laws limiting disclosure of those applications. **For an official opinion on this issue, assessors should consult their county district attorney or the attorney general, who are responsible for the administration and enforcement of the Open Meeting Law. Also see 93-54 (1/28/93).** Also found under ABATEMENTS AND APPEALS.

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89-136 (2/27/89)
Partnerships.
Furniture and Effects.
Machinery.
Poles and Wires.
Underground Conduits, Wires and Pipes.
Cable Television Firms.
All tangible personal property owned by a cable television firm that is a partnership, not a business corporation, is taxable, unless it is subject to some other type of local tax, such as a motor vehicle subject to an excise. Taxable property includes the firm's office furnishings and equipment, underground plant, aerial distribution plant on both private and public property and machinery used in the conduct of the business, including converter boxes in the homes of subscribers and transmission equipment (the "head-end" facility). **Also see 88-271 (12/8/88).**

92-248 (4/13/92)
Individuals.
Mechanic's Tools.
Piano Repair and Tuning Tools.
An individual who repairs and tunes pianos is a mechanic and his tools are exempt from personal property taxes under G.L. Ch. 59 §5(20). Mechanics include any tradesmen, artisans and craftsmen who use tools in earning a living.

92-297 (5/7/92)
Corporations.
Exemption of Personal Property Purchased by Insurance Corporations After January 1.
An insurance corporation that acquired personal property on January second from an entity subject to taxation on January first is not entitled to an abatement on the grounds the property is exempt from taxation under G.L. Ch. 59 §5(16). The insurance corporation has no standing to seek an exemption for personal property not assessed to it. Also found under ABATEMENTS AND APPEALS.

92-478 (7/22/92)
Corporations.
Partnerships.
Sole Proprietorships.
Computer Software.
Custom software is intangible personal property and is not subject to local taxation under G.L. Ch. 59 §5(24). "Canned" software is tangible personal property and unincorporated businesses would be taxable on such property, but not business corporations since it is not machinery used in the conduct of business. **Also see 90-308 (8/16/90).**

92-530 (8/26/92)
Corporations.
Non-profit Corporations.
Charitable Corporations.
All personal property of a corporation organized under G.L. Ch. 180 that does not qualify as a charitable organization is taxable by the municipality in which it is situated under G.L. Ch. 59 §§2 and 18(1). If the corporation qualifies as a charitable organization, all of its personal property would be exempt from taxation under G.L. Ch. 59 §5(3) regardless of its use.

92-757 (9/18/92)
Corporations.
Machinery.
Stock in Trade.
Copy Machines Owned by Business Corporations and Licensed in Exchange for Copy Supply Contracts.
Copy machines owned by a business corporation, which licenses them to or permits their use by businesses in exchange for contracts to provide copier supplies to those businesses, are machinery used in the conduct of the corporation's business, not stock in trade, and are subject to taxation under G.L. Ch. 59 §5(16)(2). The corporation's stock in trade is copier supplies.

92-951 (12/2/92)
Corporations.
Machinery.
Movie Theater Concession and Projection Equipment Owned by Business Corporations.
The soundbooth, projection equipment, including the screens, of a movie theater which is a business corporation is taxable machinery under G.L. Ch. 59 §5(16)(2). Concession equipment that simply heats food, as well as any used to refrigerate food or beverages, is not machinery, but any equipment with a motor or pumping component, such as a drink dispensing system, is machinery and would be taxable.

93-13 (2/19/93) (5/20/93)
Corporations.
Leasing Corporations That Lease Exclusively to Their Corporate Owners.
A leasing corporation that is wholly owned by a domestic business corporation, has no employees separate from that corporation, leases only to it, and appears to have been established only for the purpose of obtaining favorable federal and local tax treatment, is not a "business corporation" for the

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purpose of G.L. Ch. 59 §5(16)(2) because its activities do not involve "the time, labor and attention of men for livelihood, profit or gain." Nor does the leasing corporation constitute "a Massachusetts corporation subject to taxation under chapter sixty-three" under G.L. Ch. 59 §5(16)(1) because it is not a bank, insurance company, utility corporation or corporation organized "for purposes of business and profit" subject to the state corporate franchise tax. Since the leasing company does not qualify for any of the corporate personal property tax exemptions found in G.L. Ch. 59 §5(16)(1) or (2), all of its personal property, including any of the machinery it leases, is taxable. **Also see 90-342 (7/31/90).**

93-187 (3/9/93)
Corporations.
Machinery.
Power Racks, Button Machines, Sewing Machines Owned by Corporate Dry Cleaners.
Power metal racks, button machines and sewing machines owned by an incorporated dry cleaner are not directly used in the dry cleaning process and are not exempt from taxation under G.L. Ch. 59 §5(16)(2).

93-479 (6/11/93)
Corporations.
Out-of-state Insurance Corporations.
A New Hampshire insurance corporation licensed to do business in Massachusetts and paying a state premium tax under G.L. Ch. 63 §23 is only subject to personal property taxation on any poles, underground conduits, wires and pipes and machinery used in manufacturing or supplying and distributing water under G.L. Ch. 59 §5(16)(1) since the personal property of Massachusetts corporations doing business in New Hampshire is not subject to taxation in that state.

93-486 (6/9/93)
Partnerships
Corporate Partners.
A partnership of corporations is subject to personal property taxation as a partnership under G.L. Ch. 59 §18(6) and is not entitled to any of the corporate personal property exemptions set forth in G.L. Ch. 59 §5(16). **Also see 92-587 (6/25/92) (A limited partnership with a corporate partner is not entitled to any of the corporate exemptions from personal property taxes under G.L. Ch. 59 §5(16) and is subject to taxation on its tangible personalty).**

93-571 (7/15/93)
Corporations.
Machinery.
Machinery of a Start-up Biotech Companies.
Laboratory testing equipment of a biotech company that is in the early stages of research and development is subject to personal property taxation as machinery used in the conduct of business. The fact that the company has not yet produced a product or earned a profit does not mean that the equipment is not used to conduct business within the meaning of G.L. Ch. 59 §5(16)(2). Actual use of the machinery or the earning of a profit is not required. The machinery is taxable so long as it is capable of being used for the company's purposes. Federal tax and state corporate excise exemptions do not apply to the personal property tax.

93-856 (1/11/94)
Corporations.
Machinery.
Use of Computers By Business Corporations.
Computer machinery owned by a business corporation and used for generating financial statements, payroll and accounts payable data, as well as other administrative functions, would be exempt from personal property taxation under G.L. Ch. 59 §5(16)(2) if used primarily for those purposes rather than to produce a product or service of the corporation. **Also see 89-599 (8/24/89) (Discusses taxation of computers owned by corporations providing travel, real estate, financial and accounting services); 89-888 (2/12/90) (Computers owned by a corporate insurance company and used principally for preparing advertisements are taxable as machinery used in the conduct of business); 94-1023 (12/5/94) (Computers owned by a corporation in the book and magazine publishing business would be taxable if used primarily by its sales and editorial staff to produce documents for sale. However, computers used primarily to store customer databases, inventory information or other administrative purposes would be exempt as machinery used directly for administrative purposes).**

94-64 (2/4/94)
Individuals.
Furniture and Effects.
Household Furniture and Effects at Second Home of Husband and Wife Claiming Separate Domiciles.
A husband and wife who own multiple residential properties, either singly or jointly, and who do not regularly live together may have different domiciles. However, if they do live together, only one of the properties can be the couple's domicile and the household furniture and effects at the second home are not exempt from personal property taxation under G.L. Ch. 59 §5(20). Also found under EXEMPTIONS.

94-411 (5/25/94)
Corporations.
Machinery.
Cash Register and Credit Card/Check Processors Used by Business Corporations at Retail Stores.
A cash register and credit card/check processor owned by a business corporation and used to facilitate sales and retain records of transactions at a particular store site are exempt from personal property taxation under G.L. Ch. 59 §5(16)(2) as machinery used in the selling, purchasing, accounting or administrative functions (even where they are connected to a central computer which the corporation may use to generate income), because they are designed to aid or facilitate final sales at the store site.

94-676 (9/1/94)
Unregistered Vehicles.
Taxation of Unregistered Motor Vehicles.
All unregistered vehicles, except those that would be exempt from the motor vehicle excise if registered, are taxable as personal property based on their fair cash valuation. G.L. Ch. 59 §§5(35) and 38; Ch. 60A §1. This would include vehicles that are kept for a hobby, or are disassembled and/or in deteriorated condition. Owners of taxable vehicles are required to list them on a Form of List submitted to the assessors.

94-857 (2/21/95)
Corporations.
Machinery.
Underground Storage Tanks of Manufacturing Corporations.
Underground steel tanks of 2000 to 8000 gallon capacity used to store raw material before the beginning of manufacturing process by a manufacturing corporation are not machinery under G.L. Ch. 59 §5(16), where the tanks have no motorized components and appear to be separate from the machinery used to manufacture the corporation's products. Therefore, the tanks are not entitled to an exemption as machinery of a manufacturing corporation, and they may be considered as part of the taxable real estate.

94-936 (5/4/95)
Corporations.
Machinery.
Automated Conveyor and Rail Systems For Loading/Unloading Laundry.
An automated rail system in a corporate owned industrial laundry that is used to load and unload laundry into and out of washing, dry-cleaning and drying machines is not used "directly" in the dry cleaning or laundering process and is not exempt from personal property tax under G.L. Ch. 59 §5(16)(2). Arguably, the exemption for machinery used directly in the dry cleaning and laundering processes was intended to apply only to coin-operated washers, dryers or dry-cleaners, as evidenced by the title to the 1979 act adding the exemption in order to remedy a 1977 supreme judicial court case holding coin-operated laundry machines licensed for use in an apartment building were not stock in trade and were taxable. However, even if the exemption was intended to apply to such washers and dryers only, it would not apply to conveyors.

94-945 (12/7/94)
Corporations.
Machinery.
Machinery Owned and Leased by Manufacturers to Other Businesses.
Machinery owned by a manufacturing corporation is exempt from taxation under G.L. Ch. 59 §5(16)(3) even if it is leased to another business. However, if the leasing transaction is really an installment sales contract, then the "lessee" business is really the owner of the machinery and, since the lessee here is a sole proprietorship, the machinery would be taxable. In this case where the lessor manufacturing corporation retains the right not to sell the equipment to the lessee, and the right to require a substantial market price for sale, at the end of the lease, the transaction appears to be a true lease.

95-77 (2/17/95)
Machinery.
Backhoes/Other Machinery Registered and Operated on Highways With or Without Special Plates.
Backhoes and other similar machinery and equipment are not motor vehicles for purposes of assessing the motor vehicle excise under G.L. Ch. 60A, but are tangible personal property, even if registered. General Laws Ch. 90 §1 expressly excludes from the definition of motor vehicles "those vehicles which are (a) used for other purposes than transportation of property, (b) incapable of being driven at a speed exceeding twelve miles per hour and (c) used exclusively for building, repair and maintenance of highways or designed especially for use elsewhere than on the traveled part of ways." An owner of a backhoe or similar machinery may qualify for owner-contractor plates, and may move the machinery along the road using such plates. Alternatively, an owner may register the machinery. However, registering a piece of machinery or attaching a registration plate to it does not transform that machinery into a motor vehicle. Also found under **MOTOR VEHICLE EXCISE**.

95-522 (5/19/95)
Corporations.
Construction Company Equipment with Motorized or Pneumatic Parts.
Motorized compressors, table saws, hammer drills, routers and shop vacuums, as well as pneumatic jack hammers, owned by a construction company and used at various worksites are machinery used in the conduct of the business and are subject to local taxation as personal property under G.L. Ch. 59 §5(16)(2) by the municipality in which the company's headquarters is situated. Inclusion of such items as "equipment" on the company's corporate excise return was a mistake and did not take the items out of taxation for personal property.

95-551 (6/6/95)
Sole Proprietorships.
Consignment Shop Goods.
The owner of an unincorporated consignment shop is not taxable under G.L. Ch. 59 §18(2) for any consigned items that are not leased for profit, but are merely in the shop to facilitate their sale.

95-927 (12/26/95)
Corporations.
Machinery.
Failure to Apply For or Obtain Classification as Manufacturing Corporation.
A corporation which engages in manufacturing activities, and either fails to apply to the commissioner of revenue for classification as a manufacturing corporation, or to actually receive such classification from the commissioner, is not entitled to an exemption from local personal property taxes on its machinery under G.L. Ch. 59 §5(16)(3). While simple status as a manufacturing corporation is

sufficient to qualify for other tax benefits, actual classification by the commissioner is required as a pre-requisite for obtaining a local property tax exemption. Moreover, the fact that the corporation filed corporate excise returns indicating it was a manufacturing corporation and paid excise taxes on certain tangible personal property does not alleviate the corporation from liability for personal property taxes. **Also see 95-137 (4/21/95) (Where the commissioner of revenue has not designated a corporation as a manufacturing (M) corporation, the corporation will not qualify for the exemption on machinery established by G.L. Ch. 59 §5(16). The assessors lack jurisdiction to grant any abatement to a non-qualifying corporation based upon its corporate status as opposed to excessive valuation).**

95-1041 (11/7/95)
Corporations.
Underground Conduits, Wires and Pipes.
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A private sewer line constructed by a business corporation in order to connect a hotel the company built into the town sewer system that is located in a county road is taxable to the corporation as personal property. G.L. Ch. 59 §5(16)(2) and Ch. 59 §18(5).

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92-759 (8/17/92)
Lease-Purchases.
Installment Sales and Financing Agreements. "True" Leases.
A municipality may not enter into a "lease-purchase" agreement to acquire departmental equipment if the transaction is an installment sale, *i.e.*, a purchase combined with a financing arrangement, rather than a genuine lease. Cities and towns may finance the purchase of equipment over several years only by issuing debt in accordance with G.L. Ch. 44. **Also see 92-76 (2/28/92) (Agreement to lease hydraulic catch basin cleaner for three years, with an option to purchase for one dollar at the end of the lease term, is an installment sale, not a genuine lease, and can be entered into only through the issuance of debt); 94-276 (4/7/94) and 94-401 (5/25/94) (Discusses the difference between a true lease and an installment sale agreement); 95-211 (3/21/95) (An agreement for school department equipment is a financing agreement, not a lease, where the superintendant has signed an Internal Revenue Service Form 8038-G characterizing the agreement as the issuance of debt, the consideration to the town is the provision of the financing at the beginning of the agreement, the town takes title to the equipment at the outset of the agreement and the town may buy the equipment for one dollar at the end of the "lease" term).** Also found under **BORROWING**.

93-176 (3/10/93)
Multi-year Contracts.
Trash Collection Contracts.
A municipality may not make a binding multi-year contract with a vendor for trash collection in the absence of an appropriation, G.L. Ch. 44 §31, because municipalities do not have general authority, apart from that contained in the Uniform Procurement Act, G.L. Ch. 30B §12, to enter into binding multi-year contracts subject to annual appropriation, and contracts for trash collection and other solid waste disposal services are not subject to the act. Also found under **FINANCIAL MANAGEMENT**.

95-924 (12/5/95)
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A municipality's chief procurement officer (CPO) has the authority under G.L. Ch. 30B to award all contracts for services and goods not specifically exempt from Ch. 30B and must follow the procedural requirements of the statute in doing so. However, only the department head is authorized to expend money appropriated to that department and therefore, the department head must initiate the contract procedure and approve the contract before it is binding.

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89-357 (5/17/89)
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Certain capital projects funded by appropriations from free cash, rather than the tax levy, may be the subject of a capital expenditure exclusion under G.L. Ch. 59 §21C(i½).

89-687 (9/26/89)
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A municipality may exclude interest incurred on temporary debt issued for a project that is the subject of a successful debt exclusion question, as well as interest incurred on the permanent financing of the project.

91-184 (4/26/91)
Contingent Appropriations.
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A town may vote appropriations under warrant articles with language making the proposed appropriations contingent upon a Proposition 2½ ballot question with or without the contingency. Also found under APPROPRIATIONS; TOWN MEETINGS.

91-305 (5/6/91)
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A town may make all or a portion of the amount appropriated for a regional school district assessment contingent upon passage of a levy limit override. Any portion subject to the contingency becomes an effective appropriation if the override passes within the time frame set forth in G.L. Ch. 59 §21C(m), and assuming that the total amount appropriated then equals or exceeds the town's assessed share of the district budget, the budget is approved by the town at that time. If the override fails, the budget is disapproved by the town. Any amount appropriated without the contingency is still a valid appropriation and available to fund the town's assessment under the original budget, should it be approved by the required number of other member communities, or any amended budget submitted to the members if the original budget is not approved by the members. Also found under APPROPRIATIONS; SCHOOLS.

91-1037 (3/5/92)
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A debt exclusion approved by the voters for the design and construction of a transfer station will not cover debt authorized more than five years later for a transfer station project where the original construction project was for all intents and purposes abandoned by the municipality in the intervening period. **Also see 87-386 (8/3/87) (A municipality has a reasonable period of time in which to authorize a borrowing for the purpose of an approved debt exclusion question. A reasonable period of time can only be determined by an analysis of the specific facts and circumstances regarding the ballot question and project at issue).**

92-39 (2/6/92)
Contingent Appropriations.
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Effect of Contingent Appropriation Votes on Placement of Referenda Questions on Ballots.
A town may not authorize debt for the construction of a new school contingent upon approval of both a debt service exclusion for that appropriation and an override to provide funds for future expenses associated with operating the new school. Under G.L. Ch. 59 §21C(m), an appropriation may be made contingent upon the subsequent approval of a Proposition 2½ referendum question for that particular appropriation only. A town meeting vote to appropriate funds for a particular purpose contingent upon a Proposition 2½ referendum question does not place the question on the ballot. Only the board of selectmen can place a referendum question on the ballot in a town. Also found under APPROPRIATIONS.

92-824 (9/24/92)
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A municipality may reduce an appropriation for a spending purpose that was the subject of a successful levy limit override under G.L. Ch. 59 §21C(g) and its levy limit will still be increased by the amount of the override so long as it has appropriated at least that amount for the spending purpose prior to the setting of the tax rate.

92-1079 (1/19/93)
Contingent Appropriations.
Calculation of Deadline for Holding Elections.
The deadline established by G.L. Ch. 59 §21C(m) for holding elections on a Proposition 2½ ballot question intended to put a contingent appropriation into effect is measured from the date town meeting last votes on the contingent appropriation, not the date town meeting adjourns. Also found under APPROPRIATIONS.

93-295 (4/28/93).
Debt Exclusions.
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A municipality may reduce the amount of a debt service exclusion where other local revenues, such as betterments, special assessments, user charges or user fees, are associated with the capital project for which the exclusion is approved, but is not required to do so.

93-754 (9/22/93)
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Effect of Unsuccessful Ballot Questions on Appropriations for Same Purposes.
The defeat of a Proposition 2½ ballot question has no effect on an appropriation for the same purpose as the question unless the appropriation vote included express language making all or part of that appropriation contingent upon or subject to passage of the question. Therefore, a department head has authority to spend at the appropriated level.

93-887 (11/30/93)
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A debt exclusion approved by the voters after a contingent debt authorization was voted by town meeting for the same project is unaffected by the invalidity of the underlying debt authorization vote and does not have to be resubmitted to the voters once the debt is properly authorized. The effectiveness of any Proposition 2½ referendum question is not dependent upon any particular appropriation vote for the same purpose.

93-912 (11/10/93)
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A town meeting vote to approve a regional school district bond issue contingent upon the subsequent passage of a Proposition 2½ debt exclusion would not be a disapproval of the bond issue under G.L. Ch. 71 §16(d) if the question fails. Therefore, any debt exclusion referendum should be scheduled before the town meeting considering the bond issue if the town needs to know whether it can exclude the debt service in order to make a decision on the issue. Also found under **SCHOOLS**.

94-766 (8/30/94).
Overrides.
Use of Overrides to Fund Debt Service Expenses.
The board of selectmen's decision to include funds to pay for the debt services expenses associated with purchasing capital equipment in a single levy limit override question along with various operating expenses, rather than present a separate debt exclusion for those expenses, does not make a Proposition 2½ referendum approved by a majority of the voters invalid. A levy limit override presented to the voters under G.L. Ch. 59 §21C(g) may be sought for any municipal expenditure that may be lawfully funded by taxation, including debt service payments.

95-561 (6/27/95)
Overrides.
Overrides Contingent on Passage of Other Overrides.
A board of selectmen may not make a levy limit override question contingent upon the passage of any override question for a different purpose. Under G.L. Ch. 59 §21C, the passage of each ballot question is determined by the votes cast on that question only, and if a majority of the persons for on it vote "yes", it is approved.

95-800 (8/14/95)
Debt Exclusions.
Approval of Adjusted Debt Exclusion Schedules Where Delay in SBAB Reimbursement for School Construction Projects Results in Uneven Debt Service Payments.
Where a delay in the receipt of school building assistance payments (SBAB) results in uneven temporary debt service payments that cause sharp changes in a municipality's tax levy during the first few years of a school construction project for which a Proposition 2½ debt exclusion was approved, the municipality may raise and exclude anticipated debt service costs for the project on an adjusted schedule designed to moderate the annual tax increases, as approved by the director of accounts. In any year in which the municipality raises and excludes more than is actually payable as debt service for that year, the excess must be reserved by the accounting officer for appropriation to pay those costs in future years. Where a regional school district is involved, the amounts reserved would be reserved to fund that portion of future years' assessments attributable to the debt service costs for the project. In addition, if SBAB payments continue after the debt has been repaid, adjustments to the municipality's levy limits may be necessary to ensure that during the life of the borrowing it has excluded no more than its actual debt service payable (or assessed share of debt service payable in the case of a regional school project), net of SBAB.

95-890 (10/31/95)
Debt Exclusions.
Exclusion of Unexpended Bond Proceeds.
A community that completed a project for approximately 5% less than the amount borrowed may continue to exclude the debt service costs attributable to the unexpended portion of the bond proceeds where the exclusion of those costs would have little impact on property tax bills and the amount borrowed was not substantially more than local officials had reason to believe was necessary to meet anticipated project expenses at the time of the borrowing.

95-929 (10/3/95)
Debt Exclusions.
Increases in Amount of Debt Authorized for Projects.
Technical/Procedural Changes in Debt Issue for Projects.
An increase of $3,500,000 in a $9,000,000 borrowing for a new school project is not included within a

debt exclusion previously approved under G.L. Ch. 59 §21C(k) for the project and may only be excluded if a second debt exclusion to cover the increase is approved by the voters. Even if the borrowing authorization is increased by only $1,000,000, and the additional $2,500,000 needed to proceed with the project is financed from other sources, the debt service on that additional borrowing would require approval of a second debt exclusion question. Only reasonably foreseeable and modest increases in the amount of capital projects due to inflation, regulatory requirements or minor project changes come within a debt exclusion approved for the project. Any significant change in the scope of the project or the amount borrowed must be financed within the community's levy limit unless another debt exclusion covering the additional borrowing is approved. **Also see 92-998 (11/27/92) (A four percent increase in the amount of debt covered by a debt exclusion approved to cover additional costs resulting from an eminent domain taking of land for one of the covered projects may be excluded without further voter action because it is foreseeable that the amount of a taking may be challenged and increased. Changes in the technical or procedural aspects of issuing debt covered by a debt exclusion, such as the interest charged on or terms of the borrowing, do not affect the valildity or applicability of the exclusion); 91-13 (2/6/91) (An increase of $56,000 in a $7.3 million borrowing for a school project to cover water supply work ordered by the Department of Environmental Protection, additional storage space and equipment and furnishings included in the original project plan, but not purchased in order to fund other unplanned drainage and asbestos removal expenses, may be included within a debt exclusion approved for project.); 89-151 (3/6/89) (Increases of $50,000 in a $700,000 borrowing to close a landfill and of $70,000 in a $410,000 borrowing to build a transfer station may be included within a debt exclusion approved for the projects where the additional costs are relatively modest and are due to one and two year delays in obtaining the necessary regulatory approvals for the projects.); 88-235 (4/19/88) (An increase of $325,000 in a $350,000 borrowing for a police building is not included within a debt exclusion for the project and may only be excluded if a second debt exclusion to cover the increase is approved by the voters).**

95-1031 (11/7/95)
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Redesigned and Smaller Capacity, Less Expensive Transfer and Recycling Facilities.
A town meeting debt authorization of $750,000 to build a transfer station and recycling center, and a related debt exclusion approved by the town's voters for the project a month later, would still apply to a facility with a smaller processing capacity than originally envisioned at the time the votes were taken and with a lower estimated cost of $350,000. A scaled back project would be within the scope the votes, unless there is evidence that town meeting specifically intended to build the facility only if it met certain design and capacity requirements. Also found under **BORROWING**.

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89-932 (12/7/89)
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Conservation Land In Abutting Municipalities.
The portion of a large tract of land given to a town for conservation purposes that is located in the neighboring town is exempt from taxation. However, the town owning the land must make a payment in lieu of taxes on the land to the town in which the land is located under G.L. Ch. 59 §5F. Also found under **EXEMPTIONS**.

92-32 (6/2/92)
United States Agencies/Properties.
Exemptions.
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Federal Credit Union Properties Occupied for Private Purposes During Federal Conservatorships.
Property of a federal credit union is exempt from taxation while in conservatorship of or liquidation by the national credit union administration, a federal instrumentality. However, if it is occupied by private persons or entities for non-governmental purposes, it may be assessed to the occupants under certain circumstances. G.L. Ch. 59 §2B & 3E. **Also see 94-37 (1/25/94).** Also found under **EXEMPTIONS**.

92-143 (3/3/92)
District Properties.
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Taxation.
Properties Located Within Member Municipalities. Municipal Enterprises.
The property of a solid waste disposal district devoted to a public purpose is exempt from local taxation and therefore, a member of the district may not assess property taxes on district property located within the municipality. Nor may the member require a payment in lieu of tax on the property under G.L. Ch. 59 §5F because the property is located within a member municipality. The property of a municipal enterprise belongs to the municipality, not the enterprise, and is not subject to taxation or a payment in lieu of tax. Also found under **DISTRICTS**; **EXEMPTIONS**.

92-203 (3/9/92)
Municipal Properties.
Taxation.
School Buildings Leased to Private Nursery Schools.
The portion of a school building leased to and used by a private nursery school is taxable to the business lessee under G.L. Ch. 59 §2B based on the fair cash valuation of the leased portion of the building.

92-255 (12/10/92)
MWRA/MDC Watershed Lands.
Payments in Lieu of Taxes.
Application of Payments in Lieu of Taxes Hold-harmless Provision in Non-revaluation Year.
The annual payment made by the metropolitan district commission to a municipality under G.L. Ch. 59 §5G for watershed land it holds for the Massachusetts water resources authority is the greater of (1) the amount resulting from the statutory formula (valuation x tax rate) or (2) the amount due in the prior year. The so-called "hold-harmless" provision applies in any year, not just a revaluation year.

92-444 (10/8/92)
Taxation.
Property Interest Taxed Where Public Properties Occupied/Leased for Private Purposes.
Property taxes assessed under G.L. Ch. 59 §2B to persons who sold property to the United States, but retained the right to use and occupy it for residential purposes for a term of twenty-five year, are to be based on the fair market value of the fee simple interest in the property, not simply the value of the retained interest.

92-792 (9/3/92)
Mortgages and Pledges.
Pledge of Public Property to Guarantee Loans to Private Businesses.
A municipality may not pledge some of its property to guarantee a loan to a local business without violating the Anti-aid Amendment to the Massachusetts Constitution. The benefit to the public from the continued operation of the business is not sufficient to make its financial support a public purpose. Also found under **APPROPRIATIONS**.

92-884 (10/22/92)
Acquisitions.
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Commencement of Exemption for Properties Acquired After July 1.
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Foreclosure of Tax Liens on Publicly Owned Properties.
The owner of property on January first remains liable for taxes assessed on that property for the entire fiscal year, even though it was acquired by an improvement district later that year. The property would qualify for an exemption only if the district had acquired it before July first. A tax taking and foreclosure to enforce collection is not expressly prohibited, but the land court might not permit foreclosure on property of a political subdivision on public policy or other equitable grounds. The tax may also be collected by suit against the assessed

owner or use of the set-off procedure. Also found under COLLECTION PROCEDURES; EXEMPTIONS.

93-32 (1/22/93)
Eminent Domain.
Acquisitions.
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Commencement of Exemption for Properties Acquired by Eminent Domain.
Property taken by eminent domain by a municipality (or the United States or the Commonwealth of Massachusetts) is exempt from taxation for the fiscal year beginning on the July first following the taking. Also found under EXEMPTIONS.

93-682 (8/24/93)
Municipal Properties.
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Underground Water Pipes and Mains/Other Personal Property Located in Adjoining Municipalties.
Personal property owned by a municipality, located in an adjoining municipality and used to supply water and fire protection for the adjoining municipality, is exempt from taxation by the adjoining municipality. This includes any underground conduits, pipes and mains placed in public ways that would be taxable under G.L. Ch. 59 §§5(16)(1) and 18(5) if owned by a private water company rather than a municipality. Also found under EXEMPTIONS.

94-40 (3/9/94)
State Agencies/Properties.
Taxation.
Public Skating Rink Operated by Private Companies.
Real estate owned by the commonwealth on which is located a public skating rink operated by a private company under a concession agreement is taxable under G.L. Ch. 59 §2B to the company, which has a license to use the premises and is in business to earn a profit on the site, where the rink is not reasonably necessary for park purposes. Any personal property owned by the commonwealth and located at the site is exempt even if used by the operator. Machinery owned by the operator used in the operation of the rink would be taxable to the operator in the same manner as if the corporation was operating its business on private property. G.L. Ch. 59 §5(16)(2). Also found under EXEMPTIONS.

94-177 (4/8/94)
State Agencies/Properties.
Exemptions.
Properties Forfeited to Commonwealth for Illegal Drug Activity.
Property for which the district attorney sought and obtained forfeiture because of its use in connection with illegal drug activity belongs to the commonwealth under G.L. Ch. 94C §47 and is exempt from taxation under G.L. Ch. 59 §5(2). If the property is then sold, the new owner will owe a pro rata pro forma tax under G.L. Ch. 59 §2C. Also found under ASSESSMENT ADMINISTRATION; EXEMPTIONS.

94-257 (9/6/94)
United States Agencies/Properties.
Taxation.
U.S. Postal Service Properties Leased to Private Businesses.
The portion of a building owned by the United States Postal Service leased to and used by an individual conducting a real estate business is not exempt from taxation, but is taxable to the lessee under G.L. Ch. 59 §3E. Also found under EXEMPTIONS.

94-363 (4/27/94)
Exemptions.
Betterments and Special Assessments on Public Properties.
Any property owned by governmental entities and devoted to public purposes is exempt from taxation, including betterments and special assessments. **Also see 89-897 (11/30/89) (Property owned by a municipality is exempt from betterment and special assessments whether that land is located within its borders or in another municipality).** Also found under BETTERMENTS AND SPECIAL ASSESSMENTS.

94-704 (8/15/94)
State Agencies/Properties.
Taxation.
Exemptions.
Parking Lots at MDC Beaches Operated by Private Companies.
Real estate used as a parking lot for a metropolitan district commission (MDC) beach under a contract with a private company is exempt from taxation under G.L. Ch. 59 §5(2) even if the agreement is a lease for use of the property for private business purposes, rather than a management contract to operate a parking lot on behalf of the MDC. Under G.L. Ch. 59 §2B, publicly owned exempt property may be taxed if used in connection with a business conducted for profit, unless the use is "reasonably necessary" to the public purpose of a park. Here, although alternative means of transportation to the beach are available and other parking exists near the beach, the location of the beach, limited availability of other parking and the demand for parking space during the summer make the lot reasonably necessary to the recreational purposes of the beach, a park open to the general public. Also found under EXEMPTIONS.

94-910 (11/14/94)
Exemptions.
Taxation.
Airport Businesses.
Property leased by private commercial airlines at a city airport and used for passenger ticketing and waiting areas, baggage areas and other areas necessary to ticket, embark and disembark passengers and for the storage and maintenance of the airplanes is reasonably necessary to the operation of a public airport and is not taxable to the lessee under G.L. Ch. 59 §2B. However, areas leased to and used by businesses not related to airport operations, such as rental car agencies, gift/souvenir shops, car washes, pilot accessory stores, bars, restaurants and newsstands, would be taxable. **Also see 89-989 (5/18/90)**

(Areas at a public airport leased to and used by a business selling pilot accessories and equipment, such as maps and radios, is not necessary to the operation of the airport and is taxable to the lessor under G.L. Ch. 59 §2B. It is not enough for the commercial enterprise to be aeronautically related, nor of the rental revenues to be used to operate and maintain the airport. The use of the property by the lessee must be necessary to the operation of the facility). Also found under **EXEMPTIONS**.

94-1021 (12/6/94)
Municipal Properties.
Payments in Lieu of Taxes.
Effect on Amount of Payments in Lieu of Taxes of Construction of Water Treatment Plants on Watershed Land Owned in Other Municipalities.
The payment in lieu of tax made by one municipality to another for land acquired prior to January 1, 1946 for watershed purposes is not affected by the municipality's subsequent construction of a water treatment plant on the site. Under G.L. Ch. 59 §§5D and 5E, the payment is based on the three year average valuation of the land, and certain buildings that existed on the land, when it was acquired. **Also see 89-825 (11/16/89).**

94-1022 (1/19/95)
United States Agencies/Properties.
Exemptions.
Taxation.
Lessee of Properties Within U.S. Military Buses.
An office building known as South Laboratory under construction on property within Hanscom Air Force Base and under lease to the Massachusetts Institute of Technology (MIT) is exempt from taxation. The lessee MIT may not be assessed under G.L. Ch. 59 §2B, because at the time the United States acquired the land for a military reservation, Massachusetts law did not authorize the taxation of lessees of federal property. Any state jurisdiction retained over land ceded to the United States for military purposes is limited to those laws in effect at the time the land was ceded. While the commonwealth did retain taxing authority over Hanscom when it granted the property to the federal government, that retained authority only makes the laws existing at the time of the acquisition enforceable, not subsequent laws. Also found under **EXEMPTIONS**.

95-76 (5/8/95)
State Agencies/Properties.
Taxation.
Lessees/Occupants of Private Cottages in State Parks.
Summer cottages located on Peddocks Island, which was acquired by the metropolitan district commission by eminent domain and is included in the Harbor Island State Park, are taxable to their user occupants under G.L. Ch. 59 §2B. The collector may enforce collection by a sale or taking of the occupant's interest.

95-399 (8/11/95)
Exemptions.
Properties Owned by Foreign Governments.
Property purchased by a foreign government for use as consular premises or the residence of the head of the consular post is exempt from local property taxes from the date the property is acquired under the Vienna Convention on Consular Relations to which the United States is a signatory. While the lien for any outstanding taxes assessed for the period prior to the acquisition is still valid, it cannot be enforced against the foreign government owning the property. Also found under **COLLECTION PROCEDURES; EXEMPTIONS**.

95-623 (6/26/95)
State Agencies/Properties.
Exemption.
Taxation.
Dining Halls and Medical Facilities Operated by Private Companies at State Correctional Facilities.
Portions of land owned by the commonwealth that are under control of the department of corrections for use as primarily as a correctional facility and are used by private companies under contract to the state to private certain services in the prison, such as a dining hall and health service, are not taxable to the private companies under G.L. Ch. 59 §2B because the areas are occupied by the prison, not the companies. The companies do not have a leasehold interest in the areas, nor do they have sufficient control or possession of the premises, to be considered the occupants. Also found under **EXEMPTIONS**.

95-754 (10/5/95)
Municipal Properties.
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Taxation.
Municipal Properties Leased to U.S. Post Office.
A parcel of real estate owned by a town and formerly used as town hall that is now leased to the United States Postal Service is exempt from taxation because as an agency of the United States, the Postal Service is performing a public function on the site, not a business conducted for profit which would make it taxable under G.L. Ch. 59 §2B. Also found under **EXEMPTIONS**.

95-766 (11/20/95).
Municipal Properties.
Taxation.
Municipal Conservation Lands Leased to Cranberry Growers.
Town owned land, which is subject to a permanent conservation restriction and is leased to a farmer for cranberry production, is taxable to the lessee farmer under G.L. Ch. 59 §2B. Since the land is subject to a conservation restriction, and the terms of the lease also restrict its use to cranberry production, the highest and best use of the property would appear to be for such production and the assessors could follow the valuation ranges recommended by the farmland valuation advisory board under G.L. Ch. 61A, even though no Ch. 61A application can be filed since the town is the owner. Also found under **VALUATION**.

95-1110 (12/15/95)
State Agencies/Properties.
Taxation.
Public Beach Concessions Leased to and Operated by Private Businesses.
Property located in a pavilion on a metropolitan district commission beach that is used to sell refreshments, food and soft drinks under an concessionaire permit for which an fee of $9500 must be paid, is not reasonably necessary to the use of the beach, as is a parking lot, because there are several other like establishments in close proximity to this concession and accessibility to a food stand on the beach is a mere convenience to beach goers, not a necessity. **Also see 94-776 (10/12/94) (While it may be economically beneficial to town to have lessee of town owned beach concessions clean and maintain the bath house and beach area, such an arrangement does not make the lease reasonably necessary to the public purpose of a park. It is the use of the property by the lessee that must be reasonably necessary to the operation of the beach for park recreational purposes and cleaning and maintaining the facilities as part of the terms of the lease is not a use of the property by the lessee. It is merely a responsibility of the lessee's commercial occupancy); 93-116 (4/13/93) (Town owned beach concessions leased to private businesses, which are responsible under the terms of the leases for maintenance of bath house facilities, but do not operate solely for the beach going public, are not reasonably necessary to the operation of the beach and are taxable under G.L. Ch. 59 §2B).**

93-62 (1/22/93)
Applications.
Exempt Records.
Confidentiality of Income Tax Returns Submitted As Part of Exemption Applications.
A board of assessors may request applicants for personal exemptions to submit copies of their income tax returns if that information is reasonably necessary to substantiate that the applicants meet the exemptions' requisites. Any returns submitted as part of the application are confidential under G.L. Ch. 59 §60. Also found under **ABATEMENTS AND APPEALS; EXEMPTIONS**.

93-246 (4/12/93)
Computer Records.
Disclosure of Tax Commitment and Property Record Information in Electronic Form.
Under G.L. Ch. 59 §52C, a board of assessors must release the commitment list and property record information in an electronic form, rather than printouts or other paper copies, upon request if that form exists, does not contain non-public information or require significant reprogramming to screen that information, and can be copied in-house or by a service bureau contractually required or willing to make a copy. **Also see IGR No. 88-211 "Disclosure of Assessment Records" (April 1988).**

93-669 (8/12/93)
Copying Records.
Tax Bills.
Exclusive Contracts to Issue Duplicate Tax Bills.
A contract for printing tax bills that gives the contractor the exclusive right to issue duplicate bills to banks, mortgage companies or others who might request them for a fee of 60 to 90 cents per bill conflicts with the public records laws under which the tax collector, as custodian of the bills, must disclose them to any requester and provide a copy upon payment of the fee established by the secretary of state. That fee is currently no more than 20 cents per copy. G.L. Ch. 4 §7(26); 950 Code of Massachusetts Regulations (CMR) 32.06(1)(a). It may also conflict with G.L. Ch. 30B, the Uniform Procurement Act.

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Recreational Uses.
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Land Under Golf Course Clubhouses and Parking Lots.
Land under a golf course clubhouse and adjacent parking areas does not qualify for recreational land classification under G.L. Ch. 61B because those areas are not being used directly for an allowable recreational use and the improvements materially interfere with the environmental benefits or well-being of the land.

91-1012 (3/19/92)
Contiguous Land.
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A property owner must designate five or more contiguous acres of land, by way of a legal description, devoted to a qualifying use in order to be classified as recreational land under G.L. Ch. 61B. The owner may not just specify an amount of acreage within a larger parcel thereby creating a "floating" or "fluctuating" area subject to classification.

91-1041 (2/13/92)
Recreational Uses.
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Real estate used as a campground, which is minimally developed and improved for the benefit of campers, including trailer hookups for water, sewer, and electricity, may be classified under G.L. Ch. 61B. However, buildings of substantial construction or on solid foundations materially interfere with the environmental benefit of the land occupied and accessory to them, and neither those areas nor any land associated with buildings or trailers used as residences qualify for classification. **Also see 92-44 (2/13/92).**

92-374 (5/6/92)
Recreational Uses.
Environmental Benefits.
Undeveloped and Paved Areas Within Private Airports.
The undeveloped land area of a private airport not used by any commercial aircraft may qualify for recreational land classification under G.L. Ch. 61B, but land paved for use as a parking lot, runway or roadway and land under any buildings would not qualify because the improvements materially interfere with the environmental benefits or well-being of the land.

92-525 (10/7/92)
Roll-back Taxes.
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Classified recreational land sold to family members and converted to residential use is subject to a roll-back tax, or a conveyance tax if the conversion occurs within ten years from the year the property was initially classified and that tax is greater than the roll-back tax. While land sold or converted for family residential use is not subject to an option to purchase by the municipality and the owner is not required to notify the municipality of the pending sale or conversion under G.L. Ch. 61B §9, that exemption does not apply to any penalty tax.

92-842 (9/28/92)
Contiguous Land.
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Two or more separately assessed parcels may be combined in order to qualify for recreational land classification under G.L. Ch. 61B so long as they are under the same ownership and are contiguous. Parcels are contiguous if they have some common boundary, meet at some point not separated by land in other ownership, or are separated only by a public or private way or waterway.

92-1044 (12/4/92)
Applications.
Timeliness of Applications for Non-revaluation Years.
The assessors do not have authority to act on a application for classification under G.L. Ch. 61B for a fiscal year that is not a revaluation year if the application was filed after October first of the preceding year. An extension of the October first filing deadline exists for revaluation years only under G.L. Ch. 61B §5.

93-107 (4/29/93)
Options to Purchase.
Sales to Purchasers Planning to Continue Recreational Use.
A landowner selling classified recreational land to a purchaser who is planning to maintain its recreational use and who has filed an affidavit to do so with the assessors under G.L. Ch. 61B §7 is not required to notify the municipality of the proposed sale and no option to purchase arises under G.L. Ch. 61B §9.

93-142 (3/3/93)
Open and Natural Land.
Recreational Uses.
Timber Cutting for Personal Use/Sale.
Cutting of timber, other than for personal use, the cutting of firebreaks or roads or the clearing of dead or diseased trees, is consistent with land use under G.L. Ch. 61B, but any portion of classified land on which timber is cut for sale loses its classified status. **Also see 95-471 (5/9/95).**

94-662 (8/2/94)
Minimum Acreage.
Continued Classification of Land Separated By Sales.
A 4.45 acre parcel of land, which when combined with an 8.6 acre parcel across a public way under the same ownership meets the five acre minimum size requirement for classification as recreational land under G.L. Ch. 61B, will no longer qualify for such classification if the 8.6 acre parcel is sold to the department of fisheries and wildlife.

94-790 (12/28/94)
Open and Natural Land.
Roll-back Taxes.
Conversion of Natural, Wild or Open Land to Commercial Forestry Use.
Natural, wild or open land classified as recreational land under G.L. Ch. 61B is subject to a roll-back tax if it begins to be used for active, commercial forest production and cutting pursuant to an approved forest management plan. The land uses promoted by Ch. 61, classified forest land, and Ch. 61B, classified recreational land, are distinct and different, and only limited cutting for personal use is consistent with the purposes of Ch. 61B. Therefore, at the time active commercial forestry practices commence and a change in use occurs, a roll-back tax may be assessed. **Also see 95-453 (7/7/95).**

95-377 (6/20/95)
Minimum Acreage.
Exclusion of Residential Land Based on Zoning Requirements.
Any portion of land attributed to residential use based on the minimum residential lot size permitted by the municipality's zoning laws must be used to satisfy the five acre minimum acreage requirement for classification as farmland under G.L. Ch. 61A if it is actually cultivated, or for classification as recreational land under G.L. Ch. 61B if it is actually used for a qualifying recreational use. It cannot be automatically excluded. Also found under **AGRICULTURAL AND HORTICULTURAL LAND (CH. 61A)**.

95-871 (9/28/95)
Roll-back Taxes.
Conveyance Taxes.
Options to Purchase.
Activities Constituting Conversion to Another Use. Soil Testing for Septic System.
Where construction equipment is observed operating on or near a previously cleared path on a 19 acre parcel classified as recreational land under G.L. Ch. 61B on the basis of its open and natural condition, and the board of health confirms that soil testing for a septic system is being conducted involving the clearance of trees and testing on approximately 20% of the parcel, the assessors must determine if the clearing and testing activities have resulted in a substantial change in the use of all or specific portions of the parcel so as to trigger assessment of a penalty tax to the current owner. The taxpayer can conduct some minimal clearing of trees for testing purposes, and take certain other preliminary steps to determine the feasibility of converting the land to another use without triggering the penalty taxes or right of first refusal option, unless the steps taken substantially impair the recreational use of the parcel, or substantially demonstrate that a change to residential, commercial or industrial use has actually commenced.

91-305 (5/6/91)
Regional Schools.
Budgets.
Contingent Appropriations of Annual Regional School Budget Assessments.
A town may make all or a portion of the amount appropriated for a regional school district assessment contingent upon passage of a levy limit override. Any portion subject to the contingency becomes an effective appropriation if the override passes within the time frame set forth in G.L. Ch. 59 §21C(m), and assuming that the total amount appropriated then equals or exceeds the town's assessed share of the district budget, the budget is approved by the town at that time. If the override fails, the budget is disapproved by the town. Any amount appropriated without the contingency is still a valid appropriation and available to fund the town's assessment under the original budget, should it be approved by the required number of other member communities, or any amended budget submitted to the members if the original budget is not approved by the members. Also found under **APPROPRIATIONS; PROPOSITION 2½**.

92-242 (6/9/92)
Line Item Autonomy.
Budgets.
School Committees.
Power to Transfer Separate Capital Budget Appropriations for Instructional Equipment/Computers.
The school department is not bound by line item appropriations in a separately voted capital budget where the appropriations are for the purchase of computers for instructional purposes, the replacement of a piece of gymnasium equipment or the removal of hazardous waste and asbestos. These items would be considered part of the school operating budget under G.L. Ch. 71 §34 and subject to the school committee's line item autonomy because they for are instructional equipment or, in the case of the appropriation for hazardous waste and asbestos removal, for such a small amount that it would be unlikely that debt would ever be considered a funding source for it. **Also see 92-719 (8/17/92) (A school department may purchase computers for instructional purposes from its operating budget under G.L. Ch. 71 §34, but not for any other purpose if the town has a by-law requiring a separate appropriation in a capital budget for that type of equipment or has a consistent practice of doing so).**

92-270 (4/8/92)
Superintendents.
School Committees.
Mayoral Approval of Superintendents' Contracts.
A school committee has the exclusive power under G.L. Ch. 71 §41 to contract with a superintendent and that contract does not require mayoral approval under G.L. Ch. 43 §29 because it involves a matter of educational policy peculiarly within the authority of the school committee.

92-420 (5/29/92)
Regional Schools.
Funds.
District Members Restrictions on Use of Stabilization Fund.
A member of a regional school district may not place restrictions on the use of funds voted into the district's regional school stabilization fund established under G.L. Ch. 71 §16G½ and approved as part of the annual budget. Also found under **SPECIAL FUNDS**.

92-695 (8/19/92)
Principals.
Funds.
Bank Accounts by School Principals.
Monies received by a school principal in his official capacity must be turned over to the municipal or regional school district treasurer under G.L. Ch. 41 §35 and Ch. 71 §16A and may not be deposited in a separate bank account maintained by the principal. **Also see 92-379 (5/4/92).** Also found under **FINANCIAL MANAGEMENT**.

92-1012 (11/24/92)
Budgets.
School Committees.
Year End Encumbrances of Current Year Operating Budget for Next Year's Goods and Services.
School committees may encumber funds from their annual operating appropriation at the end of the fiscal year to pay for goods or services intended for use in the next fiscal year only if a binding contractual commitment, such as a purchase order, accepted bid or signed contract, is made by June thirtieth. G.L. Ch. 40 §56; Ch. 71 §49A. Also found under **FINANCIAL MANAGEMENT**.

93-247 (5/21/93)
Regional Schools.
Funds.
Use of Rental Payments from Surplus School Buildings/Space for Maintenance.
If a regional school district rents or leases surplus school buildings or space under G.L. Ch. 71 §16(r), the rental fees would be deposited in a separate

account and could be spent by the regional school committee without appropriation for the upkeep of the facility, including regular maintenance and repairs, with any balance at the end of the fiscal year to be transferred to the excess and deficiency fund. Also found under **SPECIAL FUNDS**.

93-616 (8/19/93
Budgets.
Submission of Operating Budget Requests in Line Item Format Set by Finance Committees.
A town school committee must provide its requested operating budget in the detailed, line item format prescribed by the finance committee. G.L. Ch. 41 §59.

93-623 (8/2/93)
School Committees.
Power to Establish Teacher Retirement Bonuses.
A school committee may offer a 25% retirement bonus to its teachers as a retirement incentive in order to avoid the costs of layoffs and to effectuate a savings if there is a separate line item within the school budget for that purpose. **Also see 92-567 (7/2/92) (School committee may enter into a reasonable retirement incentive program with its teachers in order to avoid expenses of layoff or reduce the cost of services if there are sufficient funds in an appropriate account to cover the cost of the program).**

93-845 (11/23/93)
Education Reform.
Budgets.
Appropriation of Operating Budgets Contingent Upon Education Reform Spending Requirements.
A municipality may not vote to appropriate funds for the school operating budget "if required by the Education Reform Act" because the only valid contingent appropriations are those made subject to passage of a Proposition 2½ ballot question under G.L. Ch. 59 §21C(m). Also found under **APPROPRIATIONS**.

93-882 (1/21/94)
Transportation.
Budgets.
Budgeting for School Transportation Contracts.
Line Item Autonomy.
School Committees.
Power of School Committee Over Transportation Appropriations.
A city or town may appropriate funds for school transportation costs within the budget of a department other than the school committee, and if placed as a separate item within the school budget, the school committee may not transfer those funds to another school purpose.

93-912 (11/10/93)
Regional Schools.
Approval of Regional School Debt Contingent on Debt Exclusion.
A town meeting vote to approve a regional school district bond issue contingent upon the subsequent passage of a Proposition 2½ debt exclusion would not be a disapproval of the bond issue under G.L. Ch. 71 §16(d) if the question fails. Therefore, any debt exclusion referendum should be scheduled before the town meeting considering the bond issue if the town needs to know whether it can exclude the debt service in order to make a decision on the issue. Also found under **PROPOSITION 2½**.

93-983 (2/7/94)
Education Reform.
Principals.
School Committees.
Superintendents.
Effect of 1993 Education Reform Act on Approval of School Department Vendor Bills and Payrolls.
The school committee remains the head of the school department for purposes of approving bills and payrolls under G.L. Ch. 41 §§41 and 56 after the passage of the 1993 Education Reform Act because the new contracting and appointing powers given to the superintendent and principals under the act are subject to personnel policies and budgetary restrictions established by the committee. Therefore, the committee must still approve, by signature of a majority of its members, all bill schedules for purchases of goods and services. It must also swear to the payroll, and may do so by designating one of its members to make oath to it. In those instances where the superintendent and principal have authority to incur particular expenses or appoint particular employees under the Education Reform Act, they should also approve those bills or swear to the payrolls of those employees. **Also see 94-545 (6/22/94) (Discusses impact of Education Reform Act on approval of bills and payrolls in regional school district and school union. The approval of the regional school committee is still required under G.L. Ch. 71 §16A).** Also found under **FINANCIAL MANAGEMENT**.

93-1039 (1/19/94)
Transportation.
Funds.
Use of Revolving Funds for Non-mandated School Bus Service.
The student activities revolving fund established by G.L. Ch. 71 §47 may be used to support a fee-based, non-mandated school transportation program where the school committee has the authority to provide school bus service and a G.L. Ch. 44 §53E½ departmental revolving fund had not been voted by the city or town for the program. Also found under **SPECIAL FUNDS**.

94-74 (2/4/94)
Budgets.
Use of Operating Funds for Evaluation Expenses of High School Accreditation Organizations and Meals During Evaluations.
The school committee may spend funds from its operating budget to pay for the "opening night meal", as well as out of pocket expenses, such as meals, travel, rooms, clerical and other related expenses, associated with the ten year evaluation and accredi-

tation of the public schools by a private accreditation organization. The evaluation furthers an appropriate school purpose, of helping the school committee assess the effectiveness of its educational programs and plan for future activities, and the expenses appear to be ordinary expenses, reasonable in amount, charged by the organization for the evaluation in lieu of a direct charge for the service. Also found under **APPROPRIATIONS**.

94-134 (3/16/94)
Budgets.
Use of Operating Funds for Snacks and Beverages at Community Reception for New Superintendents.
The school committee may spend $188 in funds from its operating budget to pay for snack foods and beverages, and related expenses, for a reception given for the new school superintendent where the event was not purely a social event, but was for the purpose of introducing the superintendent to other municipal employees and members of the community and the costs incurred were for snacks and beverages of a minimal and reasonable amount and were shared with the teachers' association. Also found under **APPROPRIATIONS**.

94-217 (5/3/94)
Regional Schools.
School Choice.
Budgeting and Spending School Choice Funds.
School choice revenues are accounted for in a special revenue fund under G.L. Ch. 76 §12B, not the general fund, and may be spent by the school committee without appropriation. Since they are treated as available funds that cannot be spent until received, they may not be used as an estimated revenue source and included in the annual regional school budget submitted to the member communities for approval, unless they are on hand. They should be accounted for in a supplement to the annual budget, which would reflect activity for the prior fiscal year.

94-648 (2/27/95)
Budgets.
Budgeting for Tuition Payments for Students Attending Schools in Other Districts.
A town that does not maintain a middle or high school may separately appropriate the budget for the operation of the town's elementary school and the budget for the payment of tuition to other towns or districts for students attending school in those towns. However, since the town's students have a right to be educated at the town's expense at any other public school approved by the department of education for their attendance, the town will still be liable for the tuition charges of whatever approved schools the students attend, even if it makes a separate appropriation.

94-660 (9/13/94)
School Committees.
Superintendents.
Delegation of Budgetary Transfer Powers to Superintendents.
A school committee may not adopt a policy permitting the school superintendent to approve budget transfers of up to $3,000. The power to transfer amounts between line items in the school operating budgets belongs exclusively to the school committee under G.L. Ch. 71 §34, and it cannot be delegated to any other municipal board or officer.

94-833 (11/30/94).
Special Needs Programs.
School Committees.
Power to Spend in Excess of Appropriation for Special Needs Costs.
School committees do not have the power to spend for special needs purposes above the amount of their appropriation. Unanticipated increases in special needs program costs must be accommodated within the school committee's budget just as unanticipated increases in other educational costs such as the price of textbooks or utility bills. Also found under **FINANCIAL MANAGEMENT**.

94-846 (10/25/94)
Funds.
Use of Interest Earned on School Lunch Funds.
Interest earned on school lunch fund monies are to be credited to the fund, not the general fund. While state law, Chapter 548 of the acts of 1948, does not expressly provide for interest to remain with the fund, federal regulations governing the program require that any interest earned on program funds are to be credited to the fund and federal law supersedes state law in this case. Also found under **SPECIAL FUNDS**.

94-923 (11/10/94)
Education Reform.
Budgets.
Effect of Education Reform on Operating Budget Reductions.
The school department budget stands on the same footing as other city departmental budgets so far as budget cuts are concerned and may be reduced upon recommendation of the mayor and approval of the city council. The mayor and council cannot decide, however, which parts of the school budget will be reduced given the school committee's authority over the school budget under G.L. Ch. 71 §34. The spending obligations of the Education Reform Act would not preclude budget reductions and should any reduction result in a school budget below the minimum required by the act, there are independent remedies for enforcing those requirements.

94-1050 (12/28/94)
Budgets.
Use of Operating Funds to Make Donation to Private, Non-profit Organization Litigating School Finance Issues.
A school committee may not spend funds from its operating budget to be paid over to a private, non-profit organization, "Council for Fair School Finance", for the purpose of paying the litigation expenses involved in bringing a lawsuit to challenge the school funding provisions of the 1993 Education Reform Act. A school committee may only pay for litigation counsel and costs under G.L. Ch. 71 §37F

for cases in which it is a party, not for legal counsel of another school committee or private parties. Moreover, it is not clear that the school committee could even bring a suit itself to litigate the school finance law since its involves constitutional issues that may not ordinarily be raised by state or local officers. Even if the committee had authority to litigate the issues, by donating funds to the Council, it would be paying for counsel under contract to a non-profit entity and there does not appear to be any contract with the Council for such legal services. If a contract did exist, no payments could be made in advance of the services being rendered. The donation appears to be for the purpose of supporting the non-profit organization which is direct contravention of the Anti-aid Amendment of the Massachusetts Constitution. Finally, such an expenditure is not within the scope of the school department's budget under G.L. Ch. 71 §34 and to the extent there is authority to challenge the school funding mechanisms, it is a general town responsibility, not a school committee one, which would require a specific appropriation for that purpose. Also found under **APPROPRIATIONS**.

95-196 (4/3/95)
Special Needs Programs.
Budgets.
Priority Payment of Special Needs Expenses Before Previously Incurred Bills.
The school department may bind itself to legal contracts only to the extent it has available, unencumbered appropriations in its budget, taking into account its ability to transfer freely between line items under G.L. Ch. 71 §34. It has authority under G.L. Ch. 71 §37 to hire legal counsel and any bills incurred from available appropriations for legal services rendered prior to encumbering funds for special needs services should be paid, even if that would make the remaining appropriation insufficient to cover the special needs costs. Those costs must be paid under G.L. Ch. 71B §5, but cannot be paid without appropriation or court judgment.

95-545 (5/26/95)
Special Needs Programs.
Funds.
Use of Medicaid Reimbursements for Special Needs Services.
Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72. Expenditures for special medical care must be routinely anticipated and regularly provided for in the school annual operating budget and should not be premised upon receipt of reimbursement. **Also see 93-1031 (12/22/93) (Any funds received as reimbursement for providing medically necessary services for special needs students under the federal Medicaid program belong to a municipality's general fund, not to the school department, and cannot be spent without appropriation. G.L. Ch. 44 §§53 and 72); 94-102 (5/17/94) (Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72); 95-444 (5/25/95).** Also found under **ACCOUNTING POLICIES AND PROCEDURES; SPECIAL FUNDS**.

95-589 (6/13/95)
School Committees.
Line Item Autonomy.
Budgets.
Power to Fund Items Not Included in Original Operating Budgets.
The school committee may pay for properly incurred teacher retirement assessments and additional insurance benefits out of its operating budget even it the budget did not originally include those purposes. The school committee has the power under G.L. Ch. 71 §34 to shift funds within its budget provided its spending stays within its total appropriation.

95-674 (7/14/95)
Budgets.
Use of Operating Funds for Student Award and School Reunion Dinners.
A school department could pay from its operating budget the $10 per person charge for a student awards dinner that included meals for students receiving various achievement awards authorized by G.L. Ch. 71 §47, as well as for some school staff members who are responsible for the awards or attend for other school related purposes. However, the cost of renting a hall and kitchen and paying for a banquet for persons attending a 50th year graduates reunion and ceremonial dinner is not a student activity or award, nor does it appear to serve any educational purpose that would justify the expenditure of municipal funds. The event would seem to be more appropriately funded by a parent/teacher organization or private donations, although school staff attendees' meals could arguably be paid by the school department if attendance is required by the school committee for a valid school purpose. In this case, where the bill for the reunion dinners was already submitted in the same manner as in many previous years and services have been rendered in good faith by a vendor, payment could be made for the service this year, but another funding mechanism should be used in the future. Also found under **APPROPRIATIONS**.

95-705 (7/18/95).
Budgets.
Compensation of Town Clerks for Preparation of School Age Residents List.
The requirement under G.L. Ch. 51 §4 that the cost of preparing the residence list of school age children for the school department "shall be carried as an item in the school committee budget," does not necessarily mean that the town clerk and the employees in her office who compiled the list are to be paid additional compensation directly by the school department. Without some evidence that this was so intended, any adjustment in wages to employees providing the service, if desired, would have to be included in the departmental budget for the clerk's office and any amounts charged to the school committee are to be credited to the town's general fund.

95-956 (10/19/95)
School Committees.
Attendance of Finance Committee Members at School Committee Bargaining Strategy Sessions. Submission of New Collective Bargaining Contracts to Appropriating Body for Approval.
Nothing in the collective bargaining, school committee or open meeting laws prohibits finance committee members from attending school committee collective bargaining strategy sessions; but the school committee may exclude such members from attendance of its executive sessions under G.L. Ch. 39 §23B(3) if it believes such attendance would have a detrimental effect on bargaining. The school committee need not request an appropriation to fund a collective bargaining agreement if it has a sufficient bottom line appropriation to cover increased cost items and therefore, it may have no need to involve the finance committee in its deliberations. Also found under **LOCAL OFFICIALS AND EMPLOYEES**.

90-559 (8/14/90)
Enterprise Funds.
Municipal Cemeteries as Utility Enterprises.
A municipality may not establish an enterprise fund under G.L. Ch. 44 §53F½ (formerly Ch. 40 §39K) for its cemetery as a utility facility because a municipal cemetery does not provide a service that cannot be obtained from other competing facilities in the area, which is the general standard for determining the types of enterprises considered utilities, such as water, sewer and electric service.

91-587 (3/26/92)
Enterprise Funds.
Accounting for Use of Enterprise Services by Municipal Departments.
The cost of any service provided by a municipal department operating as an enterprise fund under G.L. Ch. 44 §53F½ to other municipal departments should be accounted for as an interfund transaction between the general fund and enterprise fund, rather than by billing municipal departments for any service received.

92-48 (1/17/92)
Enterprise Funds.
Ambulance Service.
A municipality may establish an enterprise fund under G.L. Ch. 44 §53F½ for an ambulance service it operates.

92-50 (1/17/92)
Departmental Revolving Funds.
Fund for Lost Library Book Replacements from Lost Book Fines.
A municipality may establish a revolving fund under G.L. Ch. 44 §53E½ for the library to purchase books to replace those lost by library users using fines imposed on such users. The establishment of a departmental revolving fund is not necessarily limited to those programs sponsored by the department for which a participation fee is charged. However, there must be a direct "connection" between the receipt and the service or program provided as is the case here.

92-143 (3/3/92)
Enterprise Funds.
Payment of Taxes/In Lieu of Taxes by Enterprises.
The property of a municipal enterprise belongs to the municipality, not the enterprise, and is not subject to taxation or a payment in lieu of tax. However, under accounting principles, the cost of services provided by non-enterprise departments on behalf of the enterprise may be recovered in fees and charges, which would be treated as an estimated receipt to effectively reduce the tax levy or allow for additional appropriations. In addition, the cost of prior year subsidies of the enterprise from the general fund may be paid back from retained earnings, which will also lead to a reduced tax levy or additional levy capacity. **Also see 92-340 (11/19/92) (A payment in lieu of taxes to a municipality is a proper expense of an enterprise fund under generally accepted accounting principles (GAAP), but whether such a payment may be considered part of the actual cost of providing the service when setting the fee structure is not clear as a matter of law).** Also found under **EXEMPTIONS; PUBLIC PROPERTY**.

92-161 (4/8/92)
Arts Council Revolving Fund.
Interest Earned on Funds.
Expenditure of Funds Held for Over a Year.
Local arts councils may sponsor and conduct a wide range of activities, functions and events in promotion of the arts and may establish admissions charges and sell tickets to such events. Any monies collected in connection with the event, including donations, must be deposited in the arts council revolving fund established by G.L. Ch. 10 §58 (formerly Ch. 10 §35C). Interest earned on monies in the fund belong to the revolving fund. The local arts council many spend the fund without appropriation for future council activities and events, except that the expenditure of any monies held in the fund for more than twelve months also requires the approval of the selectmen (or mayor, city council, city or town manager).

92-207 (7/22/92)
Enterprise Funds.
Recovery of Indirect Costs in Tax Rate.
Disputes Over Indirect Costs.
The indirect costs attributable to an enterprise on account of work done by the town accountant, collector, treasurer, personnel office and town counsel are fully recovered in the tax rate setting process by applying enterprise revenues equal to the enterprise's own appropriations and the indirect costs against the amount to be raised, not by actual payments from the enterprise's appropriation to the town. Any dispute about the amount of the indirect costs is resolved by town meeting.

92-311 (4/24/92)
School Rental Fund.
Use for Salaries of School Facilities Managers.
A municipality may not pay the salary of a school administrator who has general management responsibilities over school facilities, including rented facilities, from the rental fees that are deposited in the separate fund established under G.L. Ch. 40 §3. Those fees may be spent only for the upkeep of the rented facilities themselves.

92-354 (5/13/92)
Parking Meter Receipts Reserved.
Crediting of Parking Garage Receipts to Fund.
Receipts from a municipal parking garage may be credited to the receipts reserved for appropriation accounts established under G.L. Ch. 40 §§22A-22C for parking meter revenues and appropriated for parking purposes. Also found under ACCOUNTING POLICIES AND PROCEDURES.

92-420 (5/29/92)
Stabilization Fund.
Regional School District Members Restrictions on Use of District Stabilization Fund.
A member of a regional school district may not place restrictions on the use of funds voted into the district's regional school stabilization fund established under G.L. Ch. 71 §16G½ and approved as part of the annual budget. Also found under SCHOOLS.

92-747 (8/26/92)
Use of School Property Fund.
School Rental Fund.
Use for Salaries/Benefits of Custodians Maintaining Facilities.
Fees for the use of space in a school building, as permitted by G.L. Ch. 71 §71, for a private, non-profit school day care program may be deposited into a revolving fund and spent without appropriation by the school committee for a school custodian to maintain the building during the hours used by the day care operator if the municipality has accepted the provisions of G.L. Ch. 71 §71E. If surplus school buildings or space is rented or leased for those purposes under G.L. Ch. 40 §3, the rental fees would be deposited in a separate account and could be spent without appropriation by the school committee for the upkeep of the facility, including the payment of custodians, with any balance at the end of the fiscal year reverting to the general fund. In both cases, the cost of any additional benefits, such as additional health or pension benefits, that might accrue as a result of the maintenance services should be paid from the revolving, not the general, fund. **Also see 94-252 (6/6/94) (Discusses differences between use of school property fund under G.L. Ch. 71 §71E, which governs receipts of temporary rentals of school property to local organizations and groups on an hourly or per event basis, such as the gym for the evening or the auditorium for a dance recital, and the school rental fund under G.L. Ch. 40 §3, which governs receipts from leases and term rentals of unused school buildings, or vacant space in used school buildings).**

92-784 (9/15/92)
School Rental Fund.
Use for Utilities, Repairs, Custodians and Other Upkeep Costs.
A municipality may pay for any normal expenses associated with keeping a rented school building ready for use, including custodial costs, utilities, repairs and other costs attributable to keeping the building in an operational condition, from the rental fees that are deposited in a separate fund under G.L. Ch. 40 §3. **Also see 93-696 (1/24/94) (Receipts from the rental of school buildings may be spent without appropriation under G.L. Ch. 40 §3 to pay all utility bills attributable to school buildings that are partially rented).**

92-823 (11/18/92)
Wetlands Protection Fund.
Maintenance of Separate Bank Account for Fund. Use for Membership Dues, Attorneys' Fees for Conservation By-laws and Recycling Materials.
Wetlands protection fees must be maintained as a separate special revenue account, but do not have to be deposited into a separate bank account. The fund cannot be appropriated to pay for the conservation committee' membership dues to a statewide organization, attorney's fees for drafting conservation by-laws or for recycling materials because those expenditures are not directly related to the administration of the Wetlands Protection Act. **Also see IGR 90-103 "Wetlands Protection Filing Fees" (January 1990).**

92-829 (10/19/93)
Trust Funds.
Perpetual Care Bequests.
Sale of Cemetery Lots Receipts Reserved.
Fees charged for burial permits are general revenue under G.L. Ch. 44 §53 and are treated as local estimated receipts on the tax rate recapitulation. Monies received from the sale of cemetery lots are credited to a receipts reserved for appropriation account and may be appropriated by town meeting for the care, improvement, embellishment or enlargement of the cemetery under G.L. 114 §§15 and 25. Gifts or bequests of funds for the perpetual care of cemetery lots are treated as gifts or trust funds, depending on the intent of the donor, and under G.L. Ch. 114 §25 they may be spent by the cemetery commissioners without appropriation only for their intended purposes. **Also see 90-505 (11/1/90); 92-424 (7/6/92); 92-902 (11/4/92); 94-450 (10/25/94) (Only $120 of the $900 received at the time a cemetery lot is sold is to be treated as cemetery lot proceeds under G.L. Ch. 114 §15 where the payment specifically included an amount ($780) for the "perpetual care" of the lot); IGR 90-104 "Cemetery Trust Funds" (January 1990); 95-123 (2/14/95) (Monies received from cemetery lot sales may be spent to purchase a truck, or other equipment, to be used solely for the upkeep and maintenance of the cemetery, but only after an appropriation).** Also found under ACCOUNTING POLICIES AND PROCEDURES.

92-957 (11/5/92)
Special Detail Fund.
Payments to Officers in Advance of Third Party Reimbursements.
Acceptance of Police Union Loans to Pay Officers Promptly.
Municipalities are only liable for payment for off-duty and special detail work within ten days of receiving payment from the third party for whom the work was performed under G.L. Ch. 44 §53C, but may pay after the work was performed and before receipt of the third party payment by appropriating monies into the fund. When payment is received from the third parties it would be added to the fund and could be used to pay other officers for work prior to

receipt of payment for those jobs, and so forth. A police union cannot loan money to the fund in order to pay officers more promptly, since there is no statutory authorization to borrow to pay for such details.

92-1030 (12/1/92)
Park and Recreation Revolving Fund.
Crediting of Park Use Permit Fees to Fund.
Use for Salaries/Benefits for Seasonal Employment of Full-time Employees in Other Departments.
Permit fees charged for the use of park facilities, such as ball fields, and intended to cover administrative costs or maintenance of the facilities cannot be deposited in the park and recreation revolving fund established by G.L. Ch. 44 §53D because they are not receipts received in connection with the conduct of a program sponsored by the parks department. The parks department may pay a person who runs a seasonal recreational program from the revolving fund if he is a full-time employee in another municipal department. The statute only prohibits use of revolving funds to pay full-time park and recreation employees. Any additional retirement benefits or social security taxes that might be earned by the employee as a result of the seasonal position should be included in the fee structure and reimbursed to the general fund.

92-1049 (1/22/93)
Parks and Recreation Revolving Fund.
Definition of Full-time Parks and Recreation Employee.
Use for Compensation of Full-time Employees for Extra Work.
A recreation department employee who works 20 hours per week, receives group insurance benefits and is a member of the municipal retirement system is a full-time employee for the purposes of the parks and recreation revolving fund statute, G.L. Ch. 44 §53D, and compensation for any additional hours per week the employee may serve cannot be paid from the fund.

92-1062 (12/15/92)
Outside Consultants Revolving Funds.
Crediting of Fees Charged by Zoning Boards of Appeal for Review of Special Permit Development Plans to Fund.
Fees charged a developer by a zoning board of appeals to review plans for a project being built under a special permit and to inspect work done on the project to ensure compliance with the permit and various state laws and regulations may be deposited into a special account and spent without appropriation under G.L. Ch. 44 §53G. The board imposed the fees by rules promulgated under G.L. Ch. 40A §9, which governs the issuance of special permits, is responsible for reviewing the plans under the law and has general oversight over the project even though the inspection activities may be primarily the responsibility of the building inspector.

93-28 (5/12/93)
Enterprise Funds.
Establishment of Annual Extraordinary/Unforeseen Reserve.
A town may approve as part of an enterprise fund budget established under G.L. Ch. 44 §53F½ a line item for a reserve for extraordinary or unforeseen enterprise fund expenditures during the year and may include as a requirement that the expenditures be approved by the finance committee. **Also see 93-203 (5/21/93).**

93-37 (6/10/93)
Parks and Recreation Revolving Fund.
Determination of Year End Unreserved Fund Balance.
The "unreserved fund balance" of the parks and recreation revolving fund under G.L. Ch. 44 §53D includes all funds not reserved or designated for particular purposes. Reserved funds are those for which a valid and binding liability exists, as evidenced by a purchase order, contract or the like. Designated funds are those committed and necessary to provide an offered program, service or activity, such as advance registration fees collected to support a specific recreational program.

93-85 (2/8/93)
Outside Consultants Revolving Funds.
Crediting of Fees Charged by Boards of Health for Restaurant Inspections to Fund.
Fees received by the board of health for periodic inspection of restaurants may be deposited into a special fund under G.L. Ch. 44 §53G if the fees are imposed by rules issued under G.L. Ch. 111 §31 and the inspections are done by an outside consultant hired for the task, not by a municipal officer or employee such as a health inspector. **Also see IGR 91-101 "Special Funds for Hiring Outside Consultants (February 1991).**

93-159 (3/3/93)
Law Enforcement Trust Fund.
Interest Earned on Shared Proceeds from State/Federal Drug Forfeitures.
Interest earned on cash seized or proceeds received from the sale of forfeited property obtained from joint drug related law enforcement actions belongs to the general fund, not the law enforcement trust fund established by G.L. Ch. 94C §47, if the funds are received from the commonwealth. **Also see IGR No. 90-209 "Law Enforcement Trust Fund" (January 1990).** However, if the funds are received from the federal government, they are treated as grant funds under G.L. Ch. 44 §53A and current federal forfeiture guidelines, which may be construed as establishing conditions of the grant, require any interest to remain with the funds and be used for law enforcement purposes. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

93-185 (3/18/93)
Municipal Building Insurance Fund.
Use for Repair or Rebuilding Projects.
A municipality may appropriate monies from the municipal building insurance fund established under G.L. Ch. 40 §13 to pay for the repair, replacement or reconstruction of uninsured personal property, as well as buildings and improvements to real estate, damaged, destroyed or lost by vandalism, theft, fire or other causes. The vote should be to a particular officer or department for the specific amount needed for the particular repair, replacement or rebuilding project.

93-189 (4/7/93)
Enterprise Funds.
Expansion of Enterprise to Include Additional Facilities.
A municipality may expand the scope of an established enterprise fund to include other facilities permitted by G.L. Ch. 44 §53F½.

93-247 (5/21/93)
School Rental Fund.
Use of Rental Payments from Surplus Regional School Buildings/Space for Maintenance.
If a regional school district rents or leases surplus school buildings or space under G.L. Ch. 71 §16(r), the rental fees would be deposited in a separate account and could be spent by the regional school committee without appropriation for the upkeep of the facility, including regular maintenance and repairs, with any balance at the end of the fiscal year to be transferred to the excess and deficiency fund. Also found under **SCHOOLS**.

93-411 (7/20/93)
Solid Waste Disposal Reserve Fund.
Mandatory Establishment of Fund from Solid Waste Disposal (Trash/Landfill) Fees.
Use for Debt Service and Cleanup/Closure Costs on Solid Waste Disposal Facilities.
Trash fees in a community that has debt outstanding for the construction of solid waste disposal facilities, or has potential liability for the costs of closing and cleaning up landfills or other solid waste disposal facilities, are to be set at a level sufficient to pay the cost of such cleanup activities, as well as debt service costs attributable to the facilities, and to be deposited in a reserve fund under G.L. Ch. 44 §28C(f). The power to set the fees is vested in the selectmen, unless the authority is given to some other board or officer by charter or by-law. Monies in the fund may be appropriated only for operating and capital costs related to solid waste disposal, including debt service costs on solid waste disposal facilities and cleanup and closure costs. Also found under **FEES AND CHARGES**.

93-412 (5/24/93)
Waterways Improvement and Maintenance Fund.
Establishment of Fund from Boat Excise Revenues.
A city or town must establish a waterways improvement and maintenance fund under G.L. Ch. 40 §5G if it assesses and collects a boat excise under G.L. Ch. 60B and must credit 50% of all boat excise revenue received to the fund. G.L. Ch. 60B §2(i). Also found under **BOAT EXCISE**.

93-483 (6/18/93)
Enterprise Funds.
Crediting of Betterments/Special Assessments and Committed Interest to Fund.
Receipts from apportioned or unapportioned betterments and special assessments, including committed interest, belong to the general fund under G.L. Ch. 44 §53, or the enterprise fund under G.L. Ch. 44 §53F½ if the municipality has adopted an enterprise fund for the improvement or facility for which the betterments are assessed. **Also see 93-295 (4/28/93) (Monies from apportioned and unapportioned betterments and special assessments are general revenues under G.L. Ch. 44 §53, unless the municipality has adopted an enterprise fund for the capital improvements for which the betterments were assessed. In that case, they are to be credited to the enterprise fund under G.L. Ch. 44 §53F½).** Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

93-491 (6/29/93)
Wetlands Protection Fund.
Use for Clerical Salaries, Supplies, Equipment, Consultants, Subscriptions, Conferences and Travel.
The conservation commission may spend, upon appropriation, monies in the wetland protection fund established by G.L. Ch. 131 §40 only for expenses incurred directly in the implementation, administration or enforcement of the Wetlands Protection Act, such as clerical salaries, supplies and equipment, consultants or other expenditures incurred in processing wetland applications or decisions. Expenses for subscriptions, conferences, travel or other expenditures that do not have a direct relationship to the administration of the Wetlands Protection Act cannot be made from the fund. **Also see IGR 90-103 "Wetlands Protection Filing Fees " (January 1990).**

93-515 (6/14/93)
Departmental Revolving Funds.
Fund for Police Department Operating Expenses from Traffic Violation Fines.
A municipality may not establish a police department revolving fund for equipment, details and other services using traffic violation funds under G.L. Ch. 44 §53E½ since the fines are not "departmental receipts" associated with any particular program.

93-676 (9/20/93)
Law Enforcement Trust Fund.
Use for Travel and Training.
The chief of police may not use monies in the law enforcement trust fund established by G.L. Ch. 94C §47 for out-of-state travel and training expenses because the fund may not be used for police department operating purposes. **Also see 93-958 (12/2/93) (The law enforcement trust fund established by G.L. Ch. 94C §47 is municipal money held for public purposes and may not be used to reimburse the chief of police for expenses of attending an annual conference of police chiefs in excess of the amount provided in his employment contract since he has no legal right to be reimbursed for such costs. Moreover, the fund may not be used to pay ordinary operating expenses for the police department such as a reimbursement for an annually recurring professional development expense).**

93-733 (9/3/93)
Ambulance Fees Receipts Reserved.
Use for Firefighter Salaries.
A municipality may appropriate ambulance service fees deposited into the ambulance receipts reserved for appropriation fund established under G.L. Ch. 40 §5F to pay for firefighter salaries, which would be a cost of providing ambulance service, if that service is provided by the fire department. Nothing in the

statute prohibits the appropriation of such funds for other purposes, however. See G.L. Ch. 44 §33B. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

93-742 (11/5/93)
Student Activities Revolving Fund.
Establishment of Multiple Accounts.
The revolving fund established by G.L. Ch. 71 §47 for various school sponsored student extra-curricular programs and activities may be maintained as separate accounts, categorized by functions or activities, rather than as a single account for all activities.

93-940 (12/15/93)
Trust Funds.
Annual Reporting of Library Trust Fund Receipts and Expenditures.
The board of library trustees is required to submit information related to library trust fund receipts and expenditures to the town accountant under G.L. Ch. 41 §61 for inclusion in the town report, which should be accounted for and reported on an "expendable" and "non-expendable" basis. In addition, under G.L. Ch. 78 §12, the trustees are to annually prepare a comprehensive report of their activities, which is to include information relating to the administration of trust funds and statements of unexpended balances. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

93-949 (2/1/94)
Enterprise Funds.
Appropriation of General Fund Subsidies to Enterprise Budgets.
A formal appropriation vote of the general fund subsidy to an enterprise from the tax levy, free cash or other available funds, must be taken if the anticipated enterprise revenue plus retained earnings appropriated to the enterprise plus indirect costs of the enterprise appropriated in other departmental budgets are insufficient to balance the enterprise budget. Any subsidy voted becomes part of the enterprise operating budget and no further transfer is required. Any deficit may be raised by a mid-year town meeting transfer vote under G.L. Ch. 44 §33B.

93-1039 (1/19/94)
Departmental Revolving Funds.
Student Activities Revolving Fund.
Use of Revolving Funds for Non-mandated School Bus Service.
The student activities revolving fund established by G.L. Ch. 71 §47 may be used to support a fee-based, non-mandated school transportation program where the school committee has the authority to provide school bus service and a G.L. Ch. 44 §53E½ departmental revolving fund had not been voted by the city or town for the program. Also found under **SCHOOLS**.

94-06 (1/31/94)
Departmental Revolving Funds.
Fund for Building Maintenance from Rental Revenues.
Fund for Selectmen's Regulatory Expenses from License and Permit Fees.
Payments made to a municipality under a lease for surplus space in a municipal building may not be deposited in a departmental revolving fund established under G.L. Ch. 44 §53E½ and spent to maintain and repair the leased premises since the payments are not user fees charged directly to support a particular departmental program or service. Neither are fees for regular governmental regulatory activities, such as license or permit fees issued by the board of selectmen, and the municipality should provide for payment of the expenses associated with issuance from the selectmen's regular budget, not a departmental revolving fund. **Also see 91-1014 (1/28/92) (A municipality may not establish a departmental revolving fund under G.L. Ch. 44 §53E½ to maintain several municipal buildings using revenues from the rental of two of those buildings. The establishment of a departmental revolving fund requires the provision of some program or service to the public for which some charge is made and maintenance of buildings is not such a program or service. It is an ordinary and usual expense of the municipality).**

94-107 (3/23/94)
Parks and Recreation Revolving Fund.
Use for Repair/Upgrading of Facilities and Purchase of Lawnmowers/Other Maintenance Equipment.
The parks and recreation revolving fund established under G.L. Ch. 44 §53D may be used for expenditures in direct support of and necessary to the operation of park and recreation programs and services, including purchases of equipment, such as lawnmowers used primarily to maintain fields or facilities for those programs, and the maintenance, repair or upgrading of facilities essential to the provision of the programs, such as baseball fields, basketball or tennis courts, or playgrounds.

94-122 (3/22/94)
Group Insurance Claims Trust Fund.
Elimination of Group Health Insurance Deficits.
A municipality's share of group health insurance costs must be raised in the tax rate if the appropriation made for that purpose is insufficient. G.L. Ch. 32B §3. The employees' share of the deficit should be recovered from the employees by increasing the total premium and as a result, the employees' proportionate share. G.L. Ch. 32B §3A. The deficit may also be eliminated by an appropriation or transfer from available funds, including a reserve fund transfer, if the additional expenses are extraordinary or unforeseen, but the municipality is not required to exhaust all available funds and reserves in order to cover it. Also found under **FINANCIAL MANAGEMENT**.

94-124 (4/28/94)
Departmental Revolving Funds.
Power of Appropriating Bodies to Close/Transfer Surplus in Reauthorized Funds.
Calculation of Year End Fund Surplus.
An appropriating body may direct that all or part of the operating surplus in a departmental revolving fund established under G.L. Ch. 44 §53E½ be closed to the general fund in its vote to reauthorize the fund for the next fiscal year. The surplus in the fund would not include any monies encumbered or re-

served to cover liabilities already incurred, nor monies collected in advance for and committed to particular programs, services or activities. If a fund is terminated or its purposes changed, the remaining balance automatically reverts to the general fund unless the appropriating body votes to transfer it to another purpose.

94-128 (2/23/94)
Enterprise Funds.
Borrowing from Enterprise for Unrelated Legal Expense of Other Departments.
A municipality may not appropriate funds from an enterprise fund to pay for a legal expense in another department's budget, nor specify that the enterprise will be repaid in the subsequent fiscal year. Enterprise funds cannot be used as a funding source for unrelated municipal expenditures. In addition, there is no authority to borrow funds from the enterprise or anywhere else for a current year's expense to be repaid out of the revenue of a succeeding year.

94-275 (6/14/94)
Water Revenues.
Use for Rental Payment for Water Department's Occupancy of Municipal Buildings.
A board of selectmen may not charge the town's water department rent for space occupied by the department in town buildings because a municipal department is not a legal entity distinct from the municipality for which a true rental relationship may be created. Moreover, where the department's revenues have been fully recovering the direct and indirect cost of its operations, and the town has been reimbursed for those costs appropriated elsewhere in the town budget, any surplus revenues cannot be used to pay the town an arbitrarily determined amount characterized as rent which bears no relationship to any costs borne by the town for services provided by the town on behalf of the department. G.L. Ch. 41 §69B.

94-361 (7/1/94)
Park and Recreation Revolving Fund.
Use for New Pool Linings.
Monies in the park and recreation revolving fund established under G.L. Ch. 44 §53D may be used to remove the rubber liner of the recreation center swimming pool, prepare the surface and install a new pool liner. Expenditures for these purposes, which may be characterized as maintenance or repair of the swimming pool, are in direct support of and necessary to the continued operation of a park and recreation program.

94-432 (8/1/94)
Enterprise Funds.
Adoption under Prior Statutory Reference.
An enterprise fund established by a town under G.L. Ch. 40 §39K, which was subsequently repealed and simultaneously re-enacted as G.L. Ch. 44 §53F½, remains fully effective and operative under the current statute. Town meeting may confirm the use of such a fund for the enterprise in question under the current statute, but in any event, future references to the town's authority to operate an enterprise fund should be to the current statute, G.L. Ch. 44 §53F½.

94-446 (8/8/94)
Wetlands Protection Fund.
Crediting of Conservation Commission Regulatory Fines to Fund.
Regulatory fines or penalties imposed by a local conservation commission may not be deposited in the wetlands protection fund, nor spent without appropriation by the commission. Only certain filing fees may be deposited in the wetlands protection fund, and since there is no known revolving or special fund authorized for the fines or penalties in question, they are revenue belonging to the general fund under G.L. Ch. 44 §53. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

94-585 (6/30/94)
Conservation Fund.
Use for Grant to Commonwealth to Purchase Conservation Land Within/Outside Municipality.
A conservation commission may not spend from the conservation fund established by G.L. Ch. 40 §8C to make a grant to the commonwealth for the purchase of land located in the town and the adjoining town adjacent to a state forest, where the land will be owned solely by the commonwealth. Any expenditure for conservation property out of the conservation fund requires the acquisition of some property interest in the name of the municipality, which is not the case here. In addition, the fund may not be used to purchase land outside the town.

94-624 (8/15/94)
Reserve Fund.
Use for Contributions for Private Feasibility Study About YMCA Relocation Downtown.
The finance committee may not transfer funds from the reserve fund established under G.L. Ch. 40 §6 to be contributed by the town to a private study of the feasibility of expanding the local YMCA and relocating it to a now vacant downtown location because such an expenditure is not for a proper municipal purpose. Even if the study provides some public benefits because it may impact town revitalization efforts, it is being undertaken primarily for the benefit of a charitable organization. Therefore, spending public funds on the study is prohibited by the Anti-Aid Amendment to the Massachusetts Constitution. Also found under **APPROPRIATIONS**.

94-631 (2/22/95)
Parks and Recreation Revolving Fund.
Use for Appreciation Meals for Parks and Recreation Spring Beautification Program Volunteers.
The cost of an appreciation breakfast for the parks and recreation director, and other current and former town employees, who donate time each spring to plant flowers in a town park for beautification purposes may not be charged to the parks and recreation revolving fund under G.L. Ch. 44 §53D. There may be circumstances where a special employment arrangement or other legitimate municipal purpose may permit a municipality to pay for meals, but the sort of meal at issue here does not come within those circumstances and even if it did, the cost could only be paid from an appropriation intended for such a purpose. Also found under **APPROPRIATIONS**.

94-722 (1/31/95)
Enterprise Funds.
Adoption by Special Purpose Districts.
A fire, or other special purpose, district may not establish an enterprise fund under G.L. Ch. 44 §53F½.

94-846 (10/25/94)
School Lunch Revolving Fund.
Use of Interest Earned on School Lunch Funds.
Interest earned on school lunch fund monies are to be credited to the fund, not the general fund. While state law, chapter 548 of the acts of 1948, does not expressly provide for interest to remain with the fund, federal regulations governing the program require that any interest earned on program funds are to be credited to the fund and federal law supersedes state law in this case. Also found under **SCHOOLS**.

95-03 (3/2/95)
Water Revenues.
Appropriation of Estimated Water Revenues for Water Expenses Budgeted in Other Departments. Calculation of Year End Surplus.
A district that has not accepted G.L. Ch. 41 §69B, but whose enabling legislation includes almost identical provisions, may appropriate from anticipated water revenues for all direct and indirect water system operating expenses, including debt service, regardless of where they are budgeted, *i.e.* in the water department, treasurer's office, prudential committee or other budgetary accounts. The amount appropriated from anticipated water revenues should be used as an estimated receipt when setting the tax rate and any revenues in excess of that amount would be the "net surplus" that is available for appropriation for new system construction or to reduce the water rates. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

95-46 (5/16/95)
Dog License Receipts Reserved.
Departmental Revolving Funds.
Use of Dog/Kennel License Fees for Libraries.
A town may authorize by by-law a 75 cents per dog or kennel license fee and direct its distribution for library purposes, in accordance with the same type of distribution provided under the county dog licensing system, under G.L. Ch. 140 §§147A and 172. However, the distribution creates a receipts reserved for appropriation account that may be used for library purposes. A departmental revolving fund could not be established under G.L. Ch. 44 §53E½ in this case since the license receipts being generated are not being used to support dog programs. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

95-140 (5/24/95)
Scholarship Fund.
Local Education Fund.
Acceptance of Particular Fund.
A city or town may accept G.L. Ch. 60 §3C with respect to either the municipal scholarship fund or the local education fund, or both funds.

95-221 (7/6/95)
Conservation Fund.
Crediting of Receipts from Leases of Agricultural Land under Conservation Commission Control to Fund.
Revenues from the lease of agricultural land under the control of the conservation commission belong to the general fund under G.L. Ch 44 §53, not to the conservation fund established by G.L. Ch. 40 §8C. Nor can the revenues be considered proceeds from the sale of park land to be used for capital improvements for the land under G.L. Ch. 44 §63, because a lease is not a sale or disposition of real estate and agricultural land under the control of the conservation commission is not park land for purposes of the statute. Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

95-222 (4/3/95)
Outside Consultants Revolving Funds.
Effect of Planning Board Rules Limiting Use of Funds to Particular Purposes.
While G.L. Ch. 44 §53G permits a planning board to use fees it establishes by rules and regulations under G.L. Ch. 41 §81Q to employ any outside consultant required to carry out its responsibilities, it may only use the fees for the purposes it states in the rules. Thus, where the board has limited its discretion to use fees imposed upon the submission of a preliminary subdivision plan in order to submit the plan to "an independent engineering service for review", the board may only spend them for engineering services. An appropriation would be needed for the board to contract for other types of consultant services.

95-228 (4/18/95)
Departmental Revolving Funds.
Fund for Teleprocessing Service Costs from Fees on Motor Vehicle Excises Paid by Credit Cards.
A $2.95 teleprocessing fee added to the motor vehicle excise bill of those taxpayers electing to pay their bill by credit card over the telephone cannot be retained by the company that makes the service available to cities and towns as compensation for that service. All fees must be paid over to the communities, along with the excises, and any compensation for the service would have to paid through an appropriation in the collector's regular expense budget, or for these particular contractual services. If budgeting is difficult due to inability to estimate the number of people who may pay by credit card, a municipality may establish a revolving fund under G.L. Ch. 44 §53E½ to which the teleprocessing fees may be credited and from which the company may be paid upon proper billing. Also found under **ACCOUNTING POLICIES AND PROCEDURES; FINANCIAL MANAGEMENT**.

95-292 (4/7/95)
Pension Reserve Fund.
Crediting of Federal Grant Funds Covering Pension Costs of Employees Paid from Grants to Fund.
Federal grant funds paid to municipalities to cover the projected retirement costs of employees paid from the grants are to be placed in the pension fund established by G.L. Ch. 32 §22, along with other

amounts appropriated by the municipality for such purposes. G.L. Ch. 40 §5D. There is no express requirement that federal grant funds be kept physically separate from other funds deposited in the fund. Subject to actuarial approval, pension reserve funds may be used for funding pension benefit costs for municipal employees, including those paid from federal grants. Such amounts may only be used to pay the municipality's contribution, not the employee's contribution. **Also see IGR No. 90-106 "Pension Charges to Federal Grants" (March 1990).** Also found under **ACCOUNTING POLICIES AND PROCEDURES**.

95-435 (5/4/95)
Water Revenues.
Use of Surplus Revenue for Sewer System Planning and Design.
Water surplus cannot be spent for the planning and design of a sewer system. It can only be spent for new construction, extraordinary maintenance or repairs of the water distribution system or to reduce water rates.

95-545 (5/26/95)
Departmental Revolving Funds.
Fund for Special Needs Program Services from Medicaid Reimbursements.
Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72. Expenditures for special medical care must be routinely anticipated and regularly provided for in the school annual operating budget and should not be premised upon receipt of reimbursement. **Also see 93-1031 (12/22/93) (Any funds received as reimbursement for providing medically necessary services for special needs students under the federal Medicaid program belong to a municipality's general fund, not to the school department, and cannot be spent without appropriation. G.L. Ch. 44 §§53 and 72); 94-102 (5/17/94) (Medicaid reimbursements recovered for a municipality by an independent contractor may not be deposited into a departmental revolving fund established under G.L. Ch. 44 §53E½ for the school department and spent without appropriation to compensate the contractor for services rendered, or to provide special needs students with medically necessary services, but must be deposited in the general fund as provided by G.L. Ch. 44 §72); 95-444 (5/25/95).** Also found under **ACCOUNTING POLICIES AND PROCEDURES; SCHOOLS**.

95-568 (7/7/95)
Departmental Revolving Funds.
By-law Establishing Permanent Departmental Revolving Fund for Full-time Beach Personnel Salaries/Training from Beach Sticker Fees.
A by-law establishing a permanent departmental revolving fund from beach vehicle sticker fees and limiting annual expenditures from the fund to the amount of revenue collected is inconsistent with G.L. Ch. 44 §53E½, which requires an annual vote authorizing the fund and fixing a specific, not variable, dollar limitation on expenditures, subject to modification by the board of selectmen and finance committee. The portion of the by-law authorizing the use of revolving fund monies for hiring and training of beach personnel is not inconsistent per se with the statute's restrictions on the use of those monies to pay full-time personnel since it does not expressly prohibit also using the fund to pay for the fringe benefits of any such personnel. Also found under **HOME RULE**.

95-586 (6/20/95)
Conservation Fund.
Authority of Selectmen Over Fund.
Crediting of Future State Reimbursements for Conservation Purchases to Fund.
A provision of an appropriation for the conservation fund established under G.L. Ch. 40 §8C for land acquisitions that makes the selectmen the administrators of the fund is ineffective, because the statute vests the power to purchase such lands exclusively in the conservation commission. Therefore, the commission may spend the unexpended balance of the fund for land acquisitions without the approval of the selectmen. Any reimbursements received by the town from the commonwealth for monies it has already spent for conservation land purchases belong to the general fund if the acquisitions were funded from the conservation fund, the tax levy, free cash or other available fund, and town meeting cannot dedicate them in advance of receipt and certification as free cash to a particular fund or use. However, if the town incurred debt to finance the acquisitions, the reimbursements must be reserved for appropriation to pay the remaining debt service on the acquisition loan as it becomes due. G.L. Ch. 132A §11. Any balance remaining after the loan is repaid may be appropriated by town meeting for any other use or be closed to surplus revenue to be certified as part of the town's free cash. Also found under **ACCOUNTING POLICIES AND PROCEDURES; TOWN MEETINGS**.

95-591 (6/7/95)
Municipal Anniversary Fund.
Crediting of Monies for Celebration of Town's 225th Anniversary to Fund.
A municipality may appropriate funds for the celebration of the 225th anniversary of its incorporation or settlement. The appropriation and expenditure of funds for the celebration of a municipal anniversary is a legitimate public purpose, but the monies cannot be placed into a special fund without legislative authorization. Under G.L. Ch. 44 §53I, cities and towns may only establish special funds for appropriations made for each of the five years preceding their 200th, 250th, 300th and 350th anniversaries. Also found under **APPROPRIATIONS**.

95-688 (7/25/95)
Outside Consultants Revolving Funds.
Fund for Consultant Services from Wetlands Protection Permit Fees.
Consultant fees charged by the conservation commission to applicants seeking permits under the wetlands protection act, G.L. Ch. 131 §30, in order to pay for the reasonable expenses of engaging experts to assist the commission review the application, are general fund revenue under G.L. Ch. 44 §53 and cannot be dedicated by by-law to a special fund to be spent by the commission without appropriation for the necessary services, with the balance to be returned to the applicant, because the authority under G.L. Ch. 44 §53G for such consultants' funds does not apply to the conservation commission and there is no other statutory authority for such a fund. Also found under **ACCOUNTING POLICIES AND PROCEDURES; HOME RULE.**

95-886 (9/8/95)
Reserve Fund.
Payment of Salaries for Required Officers Inadvertently Omitted from Annual Budgets.
An animal inspector appointed by the board of selectmen and paid from the selectmen's budget for the previous two years could not be paid from the police budget because the inspector's compensation was inadvertently omitted from the selectmen's budget. However, a reserve fund transfer would be permissible to pay this $1600 annual salary during the interim period prior to appropriation at special town meeting, because the position was required, compensation is mandated by G.L. Ch. 129 §17 and services had already been performed. No payment from the police wage account could be made without the police chief's approval under G.L. Ch. 41 §41, as the department head. Also found under **LOCAL OFFICIALS AND EMPLOYEES; FINANCIAL MANAGEMENT.**

95-1101 (11/29/95)
Municipal Building Insurance Fund.
Use for Liability Claims for Uninsured Damage to Private Properties.
A town may not use funds from the municipal building insurance fund established under G.L. Ch. 40 §13 to pay liability insurance deductibles, or other claims not covered by insurance, for damage done to private property. The usual practice for settlement of tort claims, including property damage, is to include in the annual budget funds for liability insurance, or a judgment and settlement account under the control of the selectmen or other officer specifically authorized to settle claims, or a combination of both. A liability reserve fund can only be established by special legislation and is usually only required if the town is self-insuring or has large deductibles, not where as here the town is only paying small property damage deductibles after insurance settlements.

92-93 (2/7/92)
Mailing.
Single Mailings of First and Second Half Bills under Semi-annual Payment Systems.
In a community using a semi-annual payment system, the tax bill and second payment notice must be separately mailed whenever the tax is due is two installments under G.L. Ch. 59 §57. A single mailing may be made only when the tax bill is mailed on or after April first and is payable in one installment.

92-224 (4/16/92)
Content.
Listing of Multiple Owners Where Space Limited on Commitment and Bills.
The tax assessment and bill for a property with multiple owners should include the full names of all owners if possible. If computer or space limitations do not permit all names to be included, then the assessment and bill must include the full name of at least one owner for the assessment and lien to be valid. Also found under ASSESSMENT ADMINISTRATION.

92-246 (4/22/92)
Content.
Valuation.
Decision to Show Separate Land and Building Values.
The assessors are not required to include an allocation of the assessed valuation of a parcel by land and improvements in their commitment to the collector, and if they do not, the collector must issue tax bills with the total assessed valuation only. If an allocation is contained in the commitment, the collector may decide whether or not to include the allocation as well as the total valuation on the bills.

93-96 (1/9/93)
Payments.
Taxpayer Directions To Apply Payments to Particular Installments.
A taxpayer making a payment to a local collector may direct him or her to apply that payment to any particular year's tax obligation that may be outstanding, but not to a particular overdue installment of that tax. **Also see IGR No. 91-210 "Taxpayer's Option to Pay Tax Before Paying Interest and Charges" (August 1991).** Also found under COLLECTION PROCEDURES.

93-397 (5/10/93)
Preliminary Taxes.
Refunds.
Overpayment of Preliminary Taxes.
Actual Tax Less Than Preliminary Taxes.
If a preliminary tax is greater than the actual tax assessed for the year and a taxpayer had paid the preliminary tax in full, he is entitled to a refund of the amount overpaid without interest. If the taxpayer has not paid the preliminary tax in full, interest will accrue on the unpaid balance of the preliminary tax until the date the actual tax was committed and thereafter, only on the unpaid balance of the actual tax. Also found under COLLECTION PROCEDURES.

93-975 (11/29/93)
Payments.
Refunds.
Inadvertent Duplicate Tax Payments.
A collector may, but is not required to, refund a second payment inadvertently made on a property tax installment, such as where the property owner and mortgagee bank both make a payment, if it would be equitable to do so, no municipal lien certificate showing the second payment has been issued and it is clear to whom the refund should be directed. **Also see 93-76 (1/29/93).** Also found under COLLECTION PROCEDURES.

94-50 (2/2/94)
Mailing.
Mailing Original Tax Bills to Mortgage Companies and Banks.
A collector may mail property tax bills directly to the person assessed, care of a mortgage company or bank at its local address, if the assessed owners have approved the sending of the notice to the bank, the bank is located in the city or town and the designation of mailing place has been filed with the town clerk and delivered to the collector in January as provided by G.L. Ch. 60 §39.

94-434 (5/26/94)
Due Dates.
Timeliness of Tax Payments Mailed On or Before Due Dates.
A property tax payment mailed on or before the payment due date, but received by the collector after that date, is late and subject to interest charges, because there is no statute permitting taxpayers to mail payments on or before the due date in order to avoid interest as is the case with federal and state income tax statutes. Also found under COLLECTION PROCEDURES.

94-479 (5/27/94)
Refunds.
Abatement Refunds to Assessed Owners of Sold Properties.
Credit of Abated Amount to Outstanding Tax Balance.
The collector has no authority to issue a refund to an assessed owner of a property, who receives an abatement and sells the property before the second tax bill is issued, if there is an outstanding balance of

the year's tax bill. G.L. Ch. 59 §69. The collector's application of the abatement to the unpaid balance, issuance of a second half bill reflecting the balance due after the abatement, and mailing of the second half bill care of the new owners, is proper. Also found under ABATEMENTS AN APPEALS; COLLECTION PROCEDURES.

94-544 (6/29/94)
Payments.
Payments Tendered Without Copies of Tax Bills.
A collector must accept any tax payment tendered that is accompanied by sufficient information identifying the particular bill or bills against which the payment is to be applied and cannot impose a penalty for not presenting a copy of the bill with a tax payment. The only collection charges and fees a collector may add to a tax bill are those found in G.L. Ch. 60 §15, which does not include such a penalty. Also found under COLLECTION PROCEDURES.

94-990 (12/12/94)
Mailing.
Proper Bills.
Due Dates.
Accrual of Interest on Bills Mailed to Wrong Addresses.
A property tax bill addressed to the location of the property, rather than the taxpayer's residence, which was in another state and had been given to the collector with a written request to direct all bills to that address, was not properly issued under G.L. Ch. 60 §3 and therefore, no interest accrues on the tax. A proper bill with the correct address must be issued for interest charges to accrue. Also found under COLLECTION PROCEDURES.

94-1094 (3/27/95)
Payments.
Partial Payments on Tax Title Accounts.
Taxpayer Directions to Apply Partial Payments to Taxes Only.
Partial payments on a tax title account must be applied in accordance with the directions of the taxpayer to the underlying tax. While G.L. Ch. 60 §62 includes interest and charges in the calculation of the minimum installment payment required to delay tax title foreclosure, it does not give the treasurer authority to apply payments other than in accordance with the request of taxpayer. Also found under COLLECTION PROCEDURES.

95-92 (4/7/95)
Payments.
Partial Payments.
Escrow Agents' Directions to Apply Partial Payments to Taxes Not Betterments and Other Added Charges.
An escrow agent making local property tax payments on behalf of a property owner may direct that the payment be applied to the underlying tax, not to any betterments or charges added to the tax, and the collector must apply the payments as directed. Escrow agents may make such a request because regulations issued under the federal Real Estate Settlement Procedures Act of 1974 (RESPA) require them to make disbursements on federally related mortgage loans from escrow accounts as the items for which the property owner is required to make deposits into the account become due even though the account does not contain sufficient funds so long as the mortgagor is current in payments, and most agents are thus obligated to make property tax and insurance premium payments, but not other charges such as utility charges and betterments. Also found under COLLECTION PROCEDURES.

95-139 (2/17/95)
Due Dates.
Calculation of First Half Payment Due Dates under Semi-annual Payment Systems.
Under G.L. Ch. 59 §57, the first half payment of property tax bills mailed after October first is due thirty days after the mailing of the bills, and when counting the days, the date the bills were mailed should be excluded. A tax payment received by the collector on that date was timely and no interest could be charged, even though tax bill had stated an earlier incorrect date as the due date. Also found under COLLECTION PROCEDURES.

95-192 (3/14/95)
Payments.
Collector's Acceptance of Payments from Co-owners.
Co-owner Request to Refuse Payments Made by Other Co-owner.
A collector may not refuse to accept payment of a property tax from one of the two assessed owners of a property where the other co-owner requested in writing that the collector accept payments only from her. As co-owners, both are jointly and severally liable for the taxes. Also found under COLLECTION PROCEDURES.

95-230 (3/13/95)
Content.
School Tax Rate.
Enclosures.
School Budget Information.
Local property tax bills may not show a "school tax rate", which was abolished in 1990. However, information about the portion of the local budget devoted to school purposes may be enclosed with the tax bills. Also found under ASSESSMENT ADMINISTRATION.

95-419 (4/27/95) (6/7/95)
Refunds.
Overpayments.
Interest on Refunds of Duplicate Payments.
A taxpayer is not entitled to interest on a refund of an overpayment (occasioned by a duplicate tax payment) that was voluntarily made by the town a few years later after an audit. There is no statute that explicitly requires the payment of interest in the case of an overpayment unless the refund resulted from an abatement, judicial proceeding or appellate tax board decision. Also found under COLLECTION PROCEDURES.

91-184 (4/26/91)
Article Scope.
Appropriations Without Proposition 2½ Contingencies Under Contingent Warrant Articles.
Appropriations from Available Funds under "Raise and Appropriate" Warrant Articles.
A town may vote appropriations under warrant articles with language making the proposed appropriations contingent upon a Proposition 2½ ballot question with or without the contingency. It may also appropriate from free cash or other available funds under warrant articles providing that the proposed appropriations are to be funded from the tax levy. Also found under **APPROPRIATIONS; PROPOSITION 2½.**

92-461 (5/19/92)
Powers.
Delegation of Selectmen's Power to Approve Treasury Warrants.
The power of the board of selectmen to approve warrants for payments from the treasury under G.L. Ch. 41 §56 cannot be delegated by the board by vote or the town by vote or by-law. **Also see 92-721 (10/23/92) (The board of selectmen cannot delegate its power to approve warrants for payments from the treasury under G.L. Ch. 41 §56 to the executive secretary).** Also found under **FINANCIAL MANAGEMENT; HOME RULE.**

92-655 (7/24/92)
Article Scope.
Authorization to Lease-Purchase under Borrowing Articles.
A vote to authorize a lease-purchase agreement to acquire departmental equipment under a warrant article that included borrowing as a funding source for the acquisition is outside the scope of the article because the rental of property, with a right to rent in future years, is substantially different than acquiring outright ownership.

92-836 (3/16/93)
Powers.
Delegation of Power to Transfer Appropriations to Finance Committees.
A town meeting cannot delegate its authority to transfer funds between separate appropriations under G.L. Ch. 44 §33B to the finance committee or other officer. Also found under **APPROPRIATIONS.**

92-1053 (2/2/93)
Votes.
Quantum Required for Sale of Tax Possession Properties.
Powers.
Earmarking of Tax Possession Proceeds into Fund for Land Acquisitions.
A majority vote of town meeting is required under G.L. Ch. 40 §3 and Ch. 30B §16 to authorize the board of selectmen to sell tax title property acquired by foreclosure. Otherwise the board can only appoint a custodian to manage the property and to sell it at public auction. G.L. Ch. 60 §77B. Proceeds from the sale of any tax title posession property are general revenue, which become part of available funds (free cash) upon certification by the director of accounts under G.L. Ch. 59 §23. A municipality cannot place the proceeds in a separate fund and reserve them for future appropriation for a restricted purpose, such as the purchase of open space, without specific legislative authority to do so. **Also see 92-1065 (12/15/92).** Also found under **ACCOUNTING POLICIES AND PROCEDURES.**

93-194 (3/11/93)
Votes.
Quantum Required for Appropriation for Prior Year Vacation Benefits As Cost Item in New Collective Bargaining Agreement.
A vote to appropriate funds to pay an employee's prior year vacation benefits, which were the subject of a grievance, required a majority vote of a special town meeting for passage, not a nine tenths vote under G.L. Ch. 44 §64, where the payment had been agreed to by the board of selectmen as part of a newly executed collective bargaining contract in order to settle the employee's grievance and induce final agreement on the contract. As a vote to approve a cost item of a newly executed collective bargaining agreement, the appropriation is intended to fund a current rather than a prior fiscal year's obligation.

95-266 (3/29/95)
Powers.
Earmarking of Current/Future Interest Earnings on State Library Grants into Stabilization Fund for Public Libraries.
Town meeting may not vote to direct that current and future interest earnings on state library grants be placed in a stabilization account for the public library. The earnings are general fund revenue under G.L. Ch. 44 §53 and are available for appropriation for any lawful municipal purposes. Town meeting cannot bind future town meetings, or restrict their discretion, in making appropriations of such funds in the future. Also found under **ACCOUNTING POLICIES AND PROCEDURES.**

95-528 (5/24/95)
Powers.
Appropriations from Future Years' Tax Levy. Monies purportedly appropriated from the fiscal year 1997 tax levy at the 1995 annual town meeting must be raised in the fiscal year 1996 tax rate under G.L. Ch. 59 §23, which requires the assessors to raise in taxes all amounts appropriated since the last tax levy. Also found under **APPROPRIATIONS**.

95-586 (6/20/95)
Powers.
Earmarking of Future State Reimbursements for Conservation Purchases to Conservation Fund. A provision of an appropriation for the conservation fund established under G.L. Ch. 40 §8C for land acquisitions that makes the selectmen the administrators of the fund is ineffective, because the statute vests the power to purchase such lands exclusively in the conservation commission. Therefore, the commission may spend the unexpended balance of the fund for land acquisitions without the approval of the selectmen. Any reimbursements received by the town from the commonwealth for monies it has already spent for conservation land purchases belong to the general fund if the acquisitions were funded from the conservation fund, the tax levy, free cash or other available fund, and town meeting cannot dedicated them in advance of receipt and certification as free cash to a particular fund or use. However, if the town incurred debt to finance the acquisitions, the reimbursements must be reserved for appropriation to pay the remaining debt service on the acquisition loan as it becomes due. G.L. Ch. 132A §11. Any balance remaining after the loan is repaid may be appropriated by town meeting for any other use or be closed to surplus revenue to be certified as part of the town's free cash. Also found under **ACCOUNTING POLICIES AND PROCEDURES; SPECIAL FUNDS**.

Valuation 40

90-1000 (2/15/91)
Fair Market Value.
Properties Subject to Options to Purchase with Disadvantageous Terms.
The fair market valuation of a property is not affected by an option to purchase given by its owners to another party under which that party has the right to meet the terms and conditions of any sale of the property for no more than $35,000 even if the agreed upon sales price exceeds that amount. The option does not restrict or otherwise affect the use of the property in the hands of any owner, but is simply a private agreement that contains financial terms that may be unfavorable to the present owner. As such, it has no bearing on the valuation of property for assessment purposes under G.L. Ch. 59 §38.

91-1009 (5/4/92)
Fair Market Value.
Deed Restrictions.
Properties Purchased under State and Local Affordable Housing Programs.
Deed restrictions that limit the conveyance and maximum resale price of a property and are imposed by state or local government under various affordable housing programs must be reflected in the valuation of the property by the assessors, unless there are particular circumstances that might influence a potential purchaser to pay more for the property. **Also see 91-896 (5/4/92); 91-900 (5/4/92); 91-916 (5/4/92); 91-971 (5/4/92).**

92-1046 (12/30/92)
Fair Market Value.
Development/Use Restrictions.
Properties Located in Historic District.
The valuation of property located in an historic district should reflect the diminution or enhancement attributable to the location and any use restrictions imposed by law, if any, but the property is not exempt from taxation.

93-363 (5/14/93)
Fair Market Value.
Tax Agreements.
The fair market valuation standard for property tax purposes cannot be varied by local assessors or by agreement of a municipality and taxpayer and any such agreement intended to establish property tax payments on some other basis is illegal and unenforceable. Also found under **ASSESSMENT ADMINISTRATION**.

93-1038 (12/29/93)
Fair Market Value.
Highest and Best Use of Private Landfills.
Methods.
Income Approach.
Privately operated resource recovery facilities and landfills subject to an annual excise based on the amount of solid waste processed at the facility or landfill under G.L. Ch. 16 §24A are subject to local property taxes only on the land on which the facility or landfill is sited. The land is to be valued at its fair market value based on its highest and best use, which in most cases would probably be its current use as a landfill, although there may be circumstances under which all or a portion of the site may reflect some other use. Typically, the market approach would be used to value land, but where few or no comparable sales are available, the assessors may use an income approach to value the landfill site and may consider any rental payments received based on the amount of solid waste processed at the site to the extent they are representative of the ability of the land to produce income. **Also see 93-406.**

95-144 (3/31/95)
Fair Market Value.
Anti-speculation Restrictions in Options to Purchase.
Assessors are to disregard "anti-speculation" restrictions placed on certain properties by a grantor in determining their fair cash valuation for tax purposes. The restrictions require subsequent owners to notify the grantor for thirty years of any potential sale and to grant an option to purchase for the amount owner originally paid for the property, plus cost of any site improvements. If a dwelling has been built on the property, the option price is the same price as any prospective purchaser would pay. If any lot is sold within the first ten years, twenty percent of the original purchase price must be paid to the grantor. The restrictions do not affect the use of the land in the hands of any owner, but merely the financial return of the current owner and therefore, are not to be considered by the assessors under G.L. Ch. 59 §38.

95-343 (4/13/95)
Fair Market Value.
Methods.
Structural Damage Due to Blasting Operations.
Repair Costs as Measure of Value Diminution.
Owners of properties with proven structural damage caused by local sandblasting operations may be entitled to an abatement to the extent the damage occurred

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before, and was unrepaired as of January first, and that damage diminished the value of the property. How any diminution is measured is an appraisal question, but the anticipated cost of repairing the damage is probably not in and of itself evidence of the influence on the value to a potential buyer.

95-766 (11/20/95)
Fair Market Value.
Municipal Owned Conservation Lands Leased for Commercial Cranberry Production to Farmers.
Town owned land, which is subject to a permanent conservation restriction and is leased to a farmer for cranberry production, is taxable to the lessee farmer under G.L. Ch. 59 §2B. Since the land is subject to a conservation restriction, and the terms of the lease also restrict its use to cranberry production, the highest and best use of the property would appear to be for such production and the assessors could follow the valuation ranges recommended by the farmland valuation advisory board under G.L. Ch. 61A, even though no Ch. 61A application can be filed since the town is the owner. Also found under **PUBLIC PROPERTY.**

95-782 (9/1/95)
Fair Market Value.
Private Deed Restrictions Prohibiting Development.
The assessors must reflect any diminution of fair market value attributable to restrictions on the construction of buildings on two adjoining ocean view lots placed in a deed for the conveyance of one the lots to the owner of a house located in front of the lot in the assessed valuation of those lots where the restrictions directly affect the use and enjoyment of the land, the express language of the deed evidences an intention that the restrictions run with the land and the restrictions can be enforced against subsequent owners of the lots because they would be on constructive notice of the restrictions. To the extent the existence of the restrictions enhances the value of the benefited lots, the assessors should also reflect that in the assessed valuations of those lots.

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